

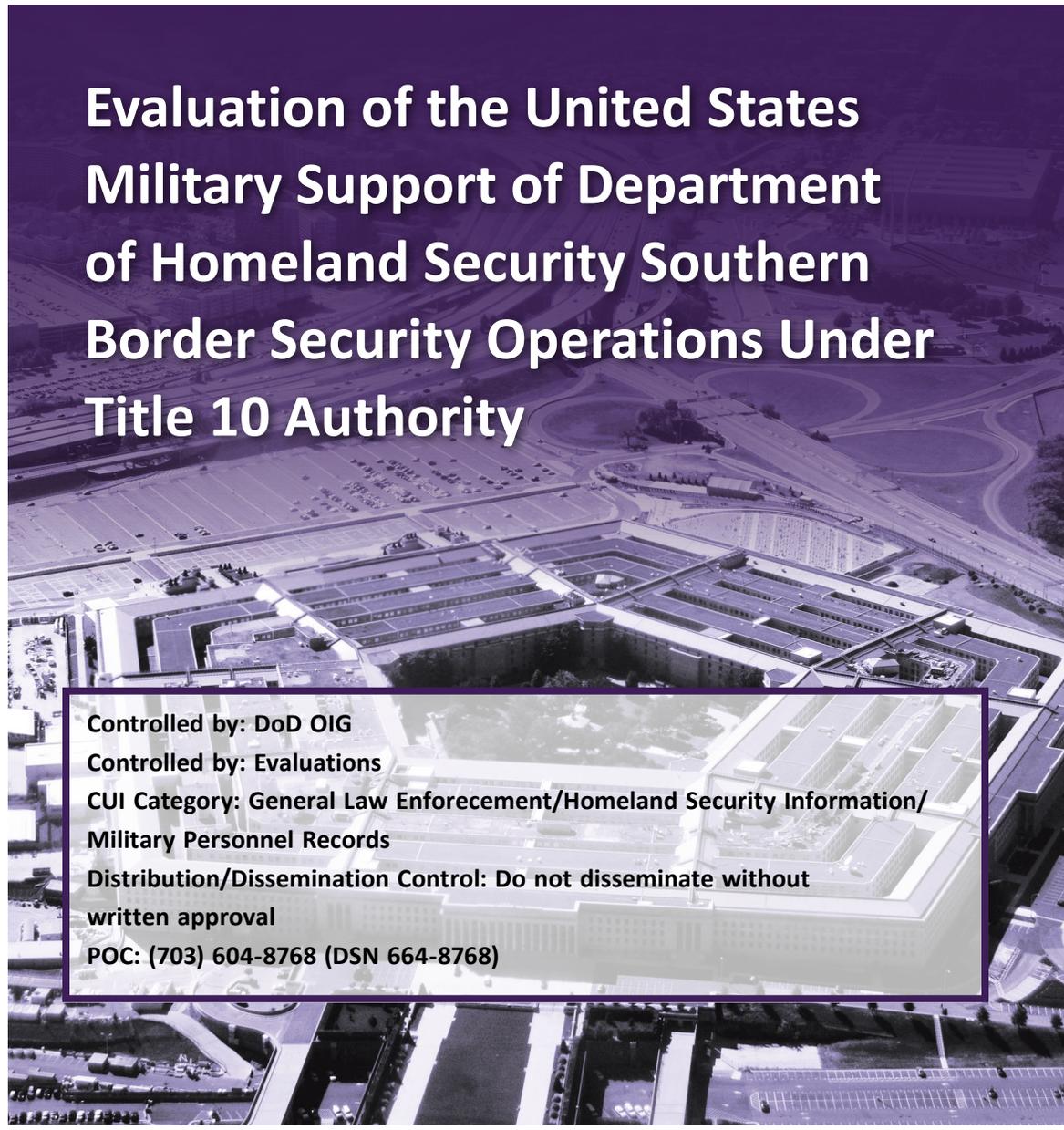
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INSPECTOR GENERAL

U.S. Department of Defense

AUGUST 14, 2020



Evaluation of the United States Military Support of Department of Homeland Security Southern Border Security Operations Under Title 10 Authority

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Results in Brief

Evaluation of the United States Military Support of Department of Homeland Security Southern Border Security Operations Under Title 10 Authority

August 14, 2020

Objective

The objectives of this evaluation focused on the use of DoD title 10 personnel supporting Department of Homeland Security (DHS) southern border security operations.¹ Specifically, we determined whether the:

- use of DoD title 10 personnel to support DHS southern border security operations was authorized by Federal laws and consistent with DoD policies;
- DoD's support of DHS southern border security operations complied with applicable Federal laws and was consistent with DoD policies;
- DoD title 10 personnel supporting the DHS were provided adequate training consistent with Federal laws and DoD policies on the Standing Rules for the Use of Force (SRUF) and on potential reaction to contact with civilians or migrants; and
- use of DoD funds for DoD title 10 support to DHS southern border security operations complied with applicable Federal laws and DoD policies.

Background

In November 2018, DoD title 10 personnel deployed to support DHS southern border security operations in California, Arizona, New Mexico, and Texas. According to the Secretary of Defense approved DHS requests for assistance, some of the duties

¹ Title 10, United States Code, "Armed Forces." Title 10 personnel include personnel activated in a title 10 status, including the active component of the Army, Navy, Air Force, Marine Corps, and Coast Guard.

Background (cont'd)

DoD title 10 personnel were approved to perform included:

- engineering support, such as building barriers at U.S. ports of entry and installing concertina wire;
- medical support, such as medical evaluations and urgent medical care to civilians and migrants;
- a crisis response force that deploys to provide protection to DHS personnel conducting operations at the ports of entry when migrants or other individuals attempting to enter the United States threaten to harm CBP personnel or disrupt the ability of CBP personnel to perform their Federal functions; and
- detection and monitoring support, such as operating remote video surveillance systems, observing checkpoints, monitoring ground sensors, and operating mobile surveillance capabilities equipment to detect civilians and migrants in the area that DoD title 10 personnel are monitoring to assist DHS.

On September 19, 2019, the DoD Office of Inspector General (DoD OIG) received a letter from 34 members of Congress requesting that the DoD OIG review the use of DoD title 10 personnel and the associated resources required to perform law enforcement assistance in support of DHS southern border security operations.

(CUI) [REDACTED]

[REDACTED] The Office of the Under Secretary of Defense for Policy provides policy direction on homeland defense matters. This guidance is communicated through the Chairman of the Joint Chiefs of Staff to the U.S. Northern Command and its subordinate commands.

The Office of the Under Secretary of Defense for Policy and U.S. Northern Command create policy and training for DoD title 10 personnel supporting DHS southern border security operations. The Under Secretary of Defense (Comptroller)/Chief Financial Officer provides financial management instructions for DoD support of DHS southern border security operations.



Results in Brief

Evaluation of the United States Military Support of Department of Homeland Security Southern Border Security Operations Under Title 10 Authority

Findings

We determined the following.

- The use of DoD title 10 personnel to support DHS southern border security operations was authorized by Federal laws and was consistent with DoD policies. Specifically, in all nine DHS Requests for Assistance that contained a request for DoD title 10 personnel, the Secretary of Defense approved activities that were authorized by Federal laws and DoD policies, including show of force, crowd control, temporary detention, conducting cursory searches, and detection and monitoring.
- Between October 24, 2018, and December 31, 2019, DoD title 10 personnel supporting DHS southern border security operations complied with applicable Federal laws and DoD policies. Specifically, we found that DoD title 10 personnel only performed duties that were approved by the Secretary of Defense in a DHS Request for Assistance, such as providing aviation support to CBP agents, installing concertina wire along the border, and staffing mobile surveillance capabilities sites. Additionally, we determined that DoD title 10 personnel had limited contact with civilians or migrants and contact that did occur was acceptable under DoD policy.
- The DoD developed adequate training on the SRUF for DoD title 10 personnel supporting DHS southern border security operations. Specifically, the training curriculum for the SRUF included title 10 authorities allowed or limited by Federal laws and DoD policies. Although the DoD did not adequately document when 20 of 54 (37 percent) DoD title 10 personnel completed SRUF training, we determined that 50 of 54 (93 percent) of the DoD title 10 personnel in our sample were provided adequate SRUF training and could generally describe the SRUF to us. The remaining four DoD title 10 personnel in our sample were not provided the SRUF training as required. Furthermore, some unit commanders and noncommissioned officers provided additional informal SRUF training to DoD title 10 personnel.
- The DoD obligated title 10 funds for DoD title 10 support to DHS southern border security operations in accordance with Federal laws and consistent with DoD policies.² Specifically, the Secretary of Defense waived reimbursement for DoD title 10 support to DHS southern border security operations in accordance with Federal laws and consistent with DoD policy. Additionally, we determined that, between October 2018 and December 2019, the Army, Air Force, and Marine Corps obligated and tracked the use of \$144.3 million of the respective Service's Operations and Maintenance funds in accordance with the DoD Financial Management Regulation (FMR) 7000.14 R and other DoD policy. For example, the Services funded DoD title 10 support to DHS southern border security operations in accordance with U.S. Northern Command fragmentary orders. Additionally, the Services used O&M funds for categories of expenses authorized in the DoD FMR. Finally, the Services tracked the funds obligated using standard financial codes in accordance with DoD policy.

² The Under Secretary of Defense (Comptroller)/Chief Financial Officer defines obligations as amounts of orders placed, contracts awarded, services received, and similar transactions during an accounting period that will require payment during the same or a future period.



Results in Brief

Evaluation of the United States Military Support of Department of Homeland Security Southern Border Security Operations Under Title 10 Authority

Recommendation

We recommend that the Commander of the U.S. Northern Command:

- provide training on the SRUF to the four DoD title 10 personnel and any other DoD title 10 personnel that were not provided training on the SRUF before deploying or performing duties to support DHS southern border security operations, as required by DoD policy; and
- establish procedures to ensure that commanders document SRUF training for DoD title 10 personnel supporting DHS southern border security operations and a process to verify that all DoD title 10 personnel have received the required training before deploying or performing duties to support DHS southern border security operations.

Management Comments and Our Response

The Commander of the U.S. Northern Command agreed with the recommendation to provide and document SRUF training to DoD title 10 personnel supporting DHS southern border security operations.

The Commander stated that SRUF training was provided to the four DoD title 10 personnel identified during our evaluation. We reviewed the orders from the U.S. Northern Command and found a requirement for quarterly SRUF training, but no evidence that the four DoD title 10 personnel that we identified were trained. Therefore, the recommendation is considered resolved, but open. We will close the recommendation when we receive evidence that the training was conducted.

The Commander also stated that fragmentary orders were published on March 25 and July 10, 2020, reinforcing the requirement that all personnel receive SRUF training and establishing a process and procedures to document and report SRUF training. We reviewed the fragmentary orders and confirmed the requirement that all personnel receive SRUF training and that commanders document and report the completion of the training. Therefore, the recommendation is closed.

Please see the Recommendations Table on the next page for the status of the recommendation.

Recommendations Table

Management	Recommendations Unresolved	Recommendations Resolved	Recommendations Closed
Commander, U.S. Northern Command	None	C.1.a	C.1.b

Please provide Management Comments by September 18, 2020.

Note: The following categories are used to describe agency management’s comments to individual recommendations.

- **Unresolved** – Management has not agreed to implement the recommendation or has not proposed actions that will address the recommendation.
- **Resolved** – Management agreed to implement the recommendation or has proposed actions that will address the underlying finding that generated the recommendation.
- **Closed** – OIG verified that the agreed upon corrective actions were implemented.





**INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500**

August 14, 2020

MEMORANDUM FOR DISTRIBUTION

**SUBJECT: Evaluation of the United States Military Support of Department of Homeland Security Southern Border Security Operations Under Title 10 Authority
(Report No. DODIG-2020-115)**

This final report provides the results of the DoD Office of Inspector General's evaluation. We previously provided copies of the draft report and requested written comments on the recommendations. We considered management's comments on the draft report when preparing the final report. These comments are included in the report.

This report contains a recommendation that is considered resolved, but remains open. For the recommendation that is resolved but remains open, as described in the Recommendations, Management Comments, and Our Response section of this report, the recommendation may be closed when we receive adequate documentation showing that all agreed-upon actions to implement the recommendation have been completed. Therefore, please provide us, within 90 days, your response concerning specific actions in process or completed on the recommendations. Your response should be sent to [REDACTED]

If you have any questions or would like to meet to discuss the evaluation, please contact [REDACTED]

[REDACTED] We appreciate the cooperation and assistance received during the evaluation.

Randolph R. Stone
Assistant Inspector General
for Evaluations of Space, Intelligence,
Engineering, and Oversight

cc:

Department of Homeland Security

Distribution:

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Introduction

Objective

The objectives of this evaluation focused on the use of DoD title 10 personnel supporting Department of Homeland Security (DHS) southern border security operations.³ Specifically, we determined whether the:

- use of DoD title 10 personnel to support DHS southern border security operations was authorized by Federal laws and consistent with DoD policies;
- DoD's support of DHS southern border security operations complied with applicable Federal laws and was consistent with DoD policies;
- DoD title 10 personnel supporting DHS southern border security operations were provided adequate training consistent with Federal laws and DoD policies on the Standing Rules for the Use of Force (SRUF) and on potential reaction to contact with civilians or migrants; and
- use of DoD funds for DoD title 10 support to DHS southern border security operations complied with applicable Federal laws and was consistent with DoD policies.

Background

On April 4, 2018, the President of the United States signed a Presidential Memorandum for the Secretary of Defense, the U.S. Attorney General, and the Secretary of Homeland Security that directed the Secretary of Defense to support DHS southern border security operations.⁴ Additionally, the President directed the Secretary of Defense to request the consent of the governors concerned to use National Guard personnel in a title 32 duty status to assist in securing the U.S. southern border and to determine what additional military resources and actions were necessary to protect the U.S. southern border.⁵

³ Title 10, United States Code, "Armed Forces." Title 10 personnel include personnel serving or activated in title 10 status, including the active, reserve and guard components of the Army, Navy, Air Force, Marine Corps, and Coast Guard. We refer to title 10 personnel supporting DHS southern border security operations in this report as "DoD title 10 personnel."

⁴ Presidential Memorandum for the Secretary of Defense, the Attorney General, and the Secretary of Homeland Security, "Securing the Southern Border of the United States," April 4, 2018.

⁵ Title 32, United States Code, "National Guard." National Guard personnel may serve in a State active duty status or in a title 32 duty status that is funded with Federal funds while remaining under the command and control of the Governor of their State, Territory, or Commonwealth. National Guard personnel, unless placed in a title 10 status, are not part of the active component Army or Air Force and thus not subject to Posse Comitatus Act restrictions. Our evaluation did not assess the President of the United States' legal authorities as Commander-in-Chief under Article II of the U.S. Constitution. According to Article II, Section 2 of the U.S. Constitution, the President is the Commander-in-Chief of the Army and Navy of the United States, and of the militia of several states, when called into actual service of the United States.

From April 2018 through December 2019, National Guard personnel in a title 32 status supported DHS southern border security operations. In November 2018, the President directed the Secretary of Defense to deploy DoD title 10 personnel to support the DHS southern border security operations. DoD title 10 personnel deployed to sectors along the U.S. southern border in California, Arizona, New Mexico, and Texas. On November 20, 2018, the President issued a memorandum documenting his decision to deploy DoD title 10 personnel, which stated:

[c]redible evidence and intelligence indicate that migrant caravans originating from Central America and moving toward the United States (southern border) may prompt incidents of violence and disorder that could threaten U.S. Customs and Border Protection and other United States Government personnel and prevent them from performing the Federal functions necessary to secure and protect the integrity of the southern border.⁶

On February 15, 2019, the President declared a national emergency along the U.S. southern border.

On September 19, 2019, the DoD Office of Inspector General (DoD OIG) received a letter from 34 members of Congress requesting that the DoD OIG review the use of DoD title 10 personnel and resources performing law enforcement assistance while supporting DHS southern border security operations and identify any potential Posse Comitatus Act violations. On December 10, 2019, the DoD OIG initiated this evaluation.

Border Security Roles and Responsibilities

Several U.S. Government agencies are involved in the planning and execution of DHS southern border security operations. The principal agency supporting DHS southern border security operations is the DoD. The following is an overview of the U.S. Government agencies that are involved in the planning and execution of DHS southern border security operations. This list is not all-inclusive, but focuses on those agencies applicable to this evaluation.

Department of Homeland Security

The DHS is responsible for securing U.S. borders by managing the flow of people and goods into the United States. Securing the U.S. borders is one of six DHS missions in the DHS strategic plan. U.S. Customs and Border Protection (CBP) is the DHS subordinate component responsible for securing U.S. borders.

⁶ White House Decision Memorandum, "Department of Defense Support for Border Security," November 20, 2018.

CBP is one of the largest law enforcement organizations in the world, with more than 60,000 employees. CBP facilitates lawful international travel and trade. According to CBP's website, CBP takes a comprehensive approach to border management and control by combining customs, immigration, border security, and agricultural protection into one coordinated and supportive activity.⁷ Within CBP are subordinate components; the U.S. Border Patrol (USBP) and the Office of Field Operations are two operational components that DoD title 10 or title 32 personnel provided support to between April 2018 and December 2019.

The USBP is a subordinate component of CBP, with more than 19,000 agents assigned to 20 sector offices that patrol more than 6,000 miles of U.S. land borders. The USBP's mission is to enforce immigration laws and to detect, interdict, and apprehend those who attempt to illegally enter or smuggle people or contraband across U.S. borders between official ports of entry.⁸

The Office of Field Operations is the largest subordinate component of CBP, with more than 28,000 employees located at 20 major field offices, 328 ports of entry, and 70 locations in over 40 countries. The Office of Field Operations oversees the operations that affect personnel and cargo transiting 328 ports of entry into the United States. The Office of Field Operations is responsible for border security, including anti-terrorism, immigration, anti-smuggling, trade compliance, and agriculture protection, while simultaneously facilitating the lawful trade and travel at U.S. ports of entry.

Department of Defense

Like DHS, there are multiple components in the DoD responsible for assisting with the planning and execution of the DHS border security mission.

Office of the Secretary of Defense

The Office of the Secretary of Defense is responsible for reviewing and approving the DHS Requests for Assistance. The Secretary of Defense oversees the DoD and acts as the principal defense policy maker and adviser. As such, the Secretary of Defense has the final decision authority on the DHS Requests for Assistance.

Office of the Under Secretary of Defense for Policy

The Office of the Under Secretary of Defense for Policy (OUSD[P]) is responsible for advising the Secretary of Defense on national security and defense strategy and the forces and contingency plans necessary to implement defense strategy, nuclear

⁷ <https://www.cbp.gov/about/leadership-organization/executive-assistant-commissioners-offices>.

⁸ <https://www.dhs.gov/how-do-i/locate-port-entry-air-land-sea>.

deterrence and missile defense policy, and security cooperation plans and policies. The OUSD(P) ensures that the DoD's program, budget, and posture decisions support and advance the strategic direction of senior DoD leaders.

Within the OUSD(P), the Assistant Secretary of Defense for Homeland Defense and Global Security (ASD[HD&GS]) is responsible for "the overall supervision of the homeland defense activities of the Department of Defense."⁹ The ASD(HD&GS) assists the Secretary of Defense in providing policy direction on homeland defense matters. This guidance is communicated through the Chairman of the Joint Chiefs of Staff (CJCS) to U.S. Northern Command (USNORTHCOM) and other combatant commands to guide the development and execution of the command's plans and activities. Furthermore, the Deputy Assistant Secretary of Defense for Homeland Defense Integration and Defense Support of Civil Authorities (DSCA) "is responsible for the development, coordination, and oversight of the integration and implementation of plans and policy for defense support of civil authorities, programs, and budgets within the DoD."¹⁰

Office of the Under Secretary of Defense (Comptroller)/Chief Financial Officer

The Under Secretary of Defense (Comptroller)/Chief Financial Officer (USD[C]/CFO) serves as the principal advisor to the Secretary of Defense on all budget and fiscal matters, including financial management, accounting policy and systems, budget formulation and execution, contract and audit administration, and general management improvement programs. Accordingly, the USD(C)/CFO establishes policy and guidance for timely reimbursement to the DoD for reimbursable DSCA activities, such as DoD support to DHS southern border security operations. The USD(C)/CFO provides accounting and logistics codes to track support costs, billing procedures for any reimbursable costs the DoD incurred providing support, and any other financial management instructions for DoD support of DHS southern border security operations.

U.S. Northern Command

USNORTHCOM, located at Peterson Air Force Base, Colorado Springs, Colorado, is a combatant command within the DoD responsible for deterring, detecting, and defeating threats to the United States, and conducting security cooperation activities with allies and partners, and supporting civil authorities.¹¹

⁹ <https://policy.defense.gov/OUSSDP-Offices/ASD-for-Homeland-Defense-Global-Security/Homeland-Defense-Integration-DSCA/faqs/>.

¹⁰ <https://policy.defense.gov/OUSSDP-Offices/ASD-for-Homeland-Defense-Global-Security/Homeland-Defense-Integration-DSCA/>.

¹¹ According to the DoD Dictionary of Military and Associated Terms, a combatant command is a "command with a broad continuing mission under a single commander established and so designated by the President, through the Secretary of Defense and with the advice and assistance of the Chairman of the Joint Chiefs of Staff."

USNORTHCOM's area of responsibility (AOR) encompasses air, land, and sea approaches to the continental United States, Alaska, Canada, Mexico, and the surrounding water out to approximately 500 nautical miles. The AOR also includes the Gulf of Mexico, the Straits of Florida, and portions of the Caribbean region, including the Bahamas, Puerto Rico, and the U.S. Virgin Islands.¹²

In times of national emergency, USNORTHCOM assists U.S. Government agencies tasked with responding to an emergency within the USNORTHCOM AOR if the emergency exceeds the capabilities of Federal, State, and local agencies. In most cases, support will be limited, localized, and specific.¹³

U.S. Army North

The U.S. Army North (ARNORTH), located at Fort Sam Houston, Texas, is the subordinate Army component of USNORTHCOM. ARNORTH's mission is to provide command and control of DoD homeland defense efforts and to coordinate DSCA. ARNORTH coordinates with the DHS to support requests for assistance related to southern border security operations.

Joint Task Force-North

The Joint Task Force-North (JTF-North), located at Biggs Army Airfield, Fort Bliss, Texas, is a subordinate component of USNORTHCOM tasked to support U.S. Federal law enforcement agencies in the interdiction of suspected transnational threats within and along the borders and ports of entry to the United States. Transnational threats are those activities conducted by individuals or groups that involve international terrorism, narcotics trafficking, alien smuggling, weapons of mass destruction, and the delivery systems for such weapons that threaten the national security of the United States. Additionally, as of January 2020, JTF-North oversees U.S. military support to DHS southern border security operations.¹⁴

Roles of DoD Title 10 Personnel

DoD title 10 personnel are active duty military members in the Army, Navy, Air Force, or Marine Corps. Additionally, National Guard military members are DoD title 10 personnel if serving under Federal authority granted in title 10,

¹² USNORTHCOM provides unity of command, which is critical to mission accomplishment. USNORTHCOM has few permanently assigned forces. Instead, the command is assigned forces whenever necessary to execute missions, as ordered by the President or Secretary of Defense.

¹³ <https://www.northcom.mil/Newsroom/Fact-Sheets/Article-View/Article/563994/us-northern-command/>.

¹⁴ According to the JTF-North Deputy Commanding Officer, JTF-North was responsible for oversight of DoD support to DHS southern border security operations between April 2018 and August 2019. Between August 2019 and January 2020, the Army Brigade that deployed to support DHS southern border security operations reported to the ARNORTH Commander. Then, in January 2020, JTF-North resumed oversight of DoD support to DHS southern border security operations.

United States Code (10 U.S.C. [1956]), “Armed Forces.” On October 26, 2018, the Secretary of Defense approved a DHS Request for Assistance (RFA) to use DoD title 10 personnel to support DHS southern border security operations. Between October 26, 2018, and December 31, 2019, all DoD title 10 personnel providing support to DHS southern border security operations were active duty military members.¹⁵ According to the Secretary of Defense approved DHS requests for assistance, some of the duties that DoD title 10 personnel have performed or continue to perform while deployed to support DHS southern border security operations are identified below.

- Aviation support personnel, including rotary wing pilots and support personnel that provide transport of CBP personnel and personnel that provide unmanned aircraft system support.
- Military planners that coordinate title 10 engineering, medical, and operation support to CBP.
- Engineering support personnel that build barriers at U.S. ports of entry and install concertina wire at the request of CBP.
- Medical support personnel that provide medical evaluations and urgent medical care to civilians or migrants.
- Operational support personnel, including transportation drivers that transport civilians or migrants in CBP custody; personnel that distribute meals and perform welfare checks of civilians or migrants in custody; motor transport maintainers; training safety officers that monitor DHS firearm ranges; personnel that operate equipment, such as forklifts, bulldozers, and graders; administrative and clerical personnel; and radio communications technicians.¹⁶
- Command and Control personnel that support CBP.
- Crisis Response Force (CRF) personnel that provide military protection to CBP personnel.¹⁷

¹⁵ National Guard military members also provided support to DHS southern border security operations. The National Guard deployed the military members in accordance with title 32 of the United States Code.

¹⁶ The DoD did not provide vehicles to transport civilians or migrants in CBP custody. DoD title 10 personnel drove CBP vehicles when transporting civilians or migrants in CBP custody.

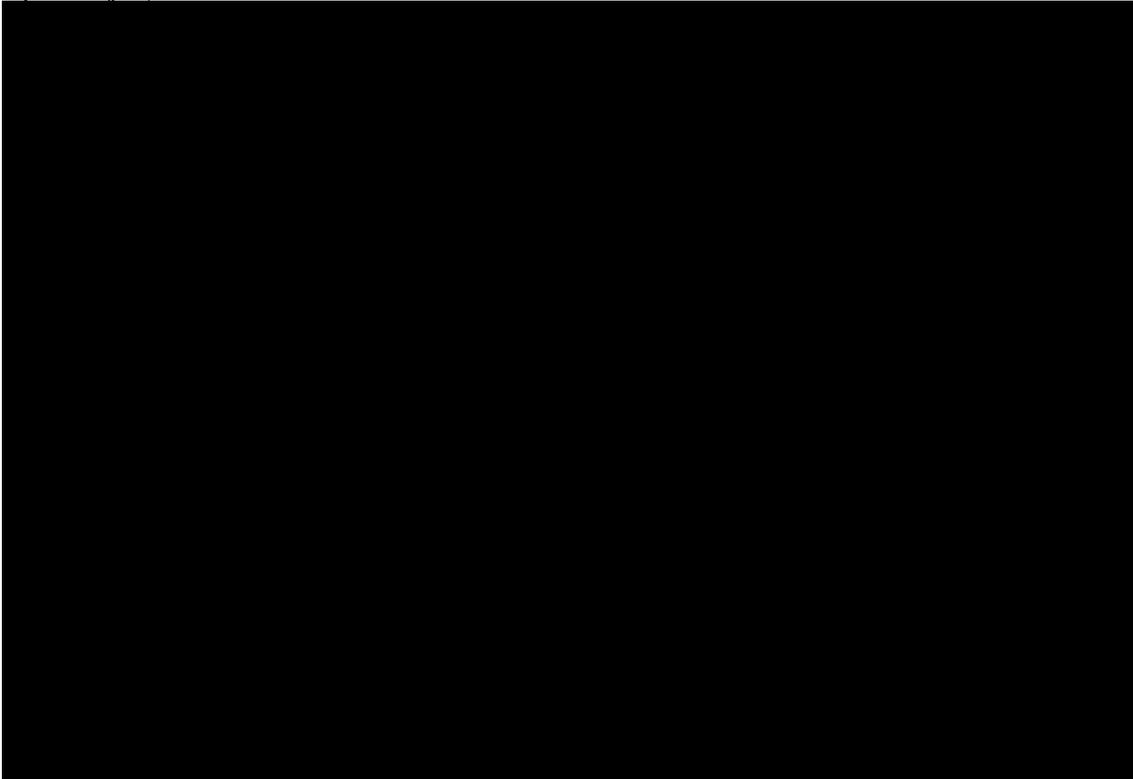
¹⁷ The CRF are DoD title 10 personnel from Fort Polk, Louisiana. According to DHS’s November 18, 2018, DHS RFA, the CRF would deploy to support DHS southern border security operations “when CBP, other Federal law enforcement personnel, National Guard personnel operating under State command and control, and State and local law enforcement personnel are unable to apprehend or otherwise control migrants or other individuals attempting to enter the United States who threaten to harm CBP personnel or disrupt the ability of such personnel to perform their Federal functions.” As identified in DoD Instruction 3025.21, the CRF is allowed to take actions such as “show of force, crowd control, temporary detention, and cursory search necessary for the protection of CBP personnel.” DoD Instruction 3025.21 is discussed more in depth in the Background Section of this report.

- Personnel that operate border remote video surveillance systems (RVSS), observe checkpoints, monitor ground sensors, and operate mobile surveillance capabilities (MSC) equipment across the U.S. southern border.¹⁸
- Infrastructure support personnel that repair fences along the U.S. southern border.

DoD Title 10 Personnel's Locations Along the U.S. Southern Border

(CUI) [REDACTED]

[REDACTED] These DoD title 10 personnel included aviation support personnel, detection and monitoring support personnel, operational support personnel, and infrastructure support personnel. The DoD title 10 personnel were located across eight sectors of the U.S. southern border, including the San Diego, El Centro (California), Yuma, Tucson (Arizona), El Paso, Big Bend, Del Rio, and Laredo (Texas) sectors. Figure 1 depicts the number and location of DoD title 10 personnel supporting DHS southern border security operations, as of January 1, 2020.



¹⁸ According to the DHS Information Technology Program Assessment, the RVSS equipment consists of “day and night cameras with remote pointing control from a Border Patrol station” and MSC equipment “may include electro-optical/infrared cameras; ground surveillance radars; laser range finders; laser illuminators; global positioning systems; and command, control, and communication systems.” The DHS website (<https://www.dhs.gov/keywords/mobile-surveillance-capability>) describes the MSC as mobile surveillance capabilities equipment while the Secretary of Defense approved DHS RFA describes it as mobile surveillance camera equipment. For the purposes of this report, we use the term mobile surveillance capabilities.

Title 32 Personnel

Title 32 personnel are National Guard personnel that are funded with Federal funds, while remaining under the command and control of the Governor of their State, Territory, or Commonwealth. In April 2018, National Guard personnel, in title 32 status, began to support DHS southern border security operations.

National Guard personnel, unless placed in a title 10 status, are not part of the active-duty component of the Army or Air Force and thus are not subject to Posse Comitatus Act restrictions.¹⁹ This evaluation focused on the use of DoD title 10 personnel because the Posse Comitatus Act does not apply to title 32 personnel, as will be discussed later in this report.

Federal Laws Related to the Use of DoD Title 10 Personnel for Law Enforcement Purposes Within the United States

The DoD is authorized to provide title 10 support to civilian law enforcement authorities when circumstances arise that other Federal, State, and local law enforcement agencies are unable to mitigate or suppress. The use of DoD title 10 personnel is subject to various restrictions and authorities pursuant to Federal laws. The following sections discuss some of the applicable Federal laws related to the use of DoD title 10 personnel to provide support to civilian law enforcement agencies.

National Defense Authorization Act for Fiscal Year 2016

Section 1059 of the National Defense Authorization Act for Fiscal Year 2016 authorizes the Secretary of Defense to “provide assistance to United States Customs and Border Protection for purposes of increasing ongoing efforts to secure the southern land border of the United States.”²⁰ Types of support authorized by Section 1059 include deploying DoD title 10 personnel to the southern land border of the United States and deploying manned aircraft, unmanned aerial surveillance systems, and ground-based surveillance systems to support continuous surveillance of the southern land border of the United States. Additionally, the law states that the Secretary of Defense may provide intelligence analysis support, and deploy materiel, equipment, and logistics support as necessary to ensure the effectiveness of any assistance provided. The National Defense Authorization Act for Fiscal Year 2016 also authorizes the Secretary of Defense to use up to \$75 million of DoD funds in fiscal year 2016 to provide this assistance.

¹⁹ The Posse Comitatus Act generally prohibits the use of active duty military personnel to enforce U.S. laws and domestic policies within the borders of the United States, unless expressly authorized by the Constitution or through an act of Congress. This is discussed more in depth in another area of this report.

²⁰ Public Law 114-92, section 1059, “Department of Defense Authority to Provide Assistance to Secure the Southern Land Border of the United States,” November 25, 2015.

Federal Laws Regarding Defense Support for Civilian Law Enforcement Agencies

Sections 274 through 277, title 10, United States Code (10 U.S.C. §§ 274-277 [2018]) authorize the use of military support to civilian law enforcement authorities.²¹

The following is a description of some of the statutes.

- Section 274, title 10, United States Code (10 U.S.C. § 274 [2018]) authorizes the Secretary of Defense to make personnel available to maintain equipment for Federal, State, and local civilian law enforcement officials. It also authorizes the Secretary of Defense to make DoD title 10 personnel available to operate the equipment for civilian law enforcement agencies within specified parameters after receiving a request from a Federal law enforcement agency. It specifically authorizes the DoD title 10 personnel to operate equipment for the “[d]etection, monitoring, and communication of the movement of surface traffic outside of the geographic boundary of the United States and within the United States not to exceed 25 miles of the boundary if the initial detection occurred outside of the boundary.” In addition, 10 U.S.C. § 274 (2018) authorizes DoD title 10 personnel to operate equipment for purposes other than those specifically identified, so long as activities do not involve direct participation in a civilian law enforcement operation unless such direct participation “is otherwise authorized by law.”
- Section 275, title 10, United States Code (10 U.S.C. § 275 [2018]) directs the Secretary of Defense to prescribe regulations to ensure that any activity performed under title 10, chapter 15, does not include or permit participation by military personnel in “search, seizure, arrest, or other similar activity unless participation in such activity by such member is otherwise authorized by law.”
- Section 277, title 10, United States Code (10 U.S.C. § 277 [2018]) identifies reimbursement requirements for the DoD by civilian law enforcement agencies. Additionally, 10 U.S.C. § 277 (2018) allows the Secretary of Defense to waive the requirement for reimbursement for support to the civilian law enforcement agency if such support, “(1) is provided in the normal course of military training or operations; or (2) results in a benefit to the element of the DoD or personnel of the National Guard providing the support that is substantially equivalent to that which would otherwise be obtained from military operations or training.”

²¹ 10 U.S.C chapter 15, “Military Support for Civilian Law Enforcement Agencies.”

The Posse Comitatus Act

The Posse Comitatus Act was enacted in 1878 and generally prohibits the use of DoD title 10 personnel to enforce U.S. laws within the borders of the United States unless expressly authorized by the Constitution or through an act of Congress.²²

The Act states:

[w]hoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both.

The purpose of the Posse Comitatus Act was “to limit direct military involvement with civilian law enforcement, absent congressional or constitutional authorization.”²³ Although the Posse Comitatus Act does not specifically mention the Navy, the DoD and Navy have also established policies to restrict the use of DoD title 10 personnel to enforce civilian laws consistent with the restrictions imposed by 10 U.S.C. § 275 (2018).²⁴

National Emergencies Act

The National Emergencies Act provides the President with the authority to declare a national emergency.²⁵ The law requires that the President specify in the national emergency declaration, or subsequent Executive Orders, the authorities and provisions exercised under the national emergency. The law specifically states:

[w]hen the President declares a national emergency, no powers or authorities made available by statute for use in the event of an emergency shall be exercised unless and until the President specifies the provisions of law under which he proposes that he, or other officers will act. Such specification may be made either in the declaration of a national emergency, or by one or more contemporaneous or subsequent Executive orders published in the Federal Register and transmitted to the Congress.

²² 18 U.S.C § 1385, “Use of Army and Air Force as Posse Comitatus,” is referred to in this report as the Posse Comitatus Act.

²³ Center for Law and Military Operations, The Judge Advocate General’s Legal Center and School, United States Army, “Domestic Operational Law: 2018 Handbook for Judge Advocates,” September 2018.

²⁴ DoD Instruction 3025.21, “Defense Support of Civilian Law Enforcement Agencies,” February 27, 2013; Secretary of the Navy Instruction 5820.7C, “Cooperation with Civilian Law Enforcement Officials,” January 26, 2006.

²⁵ §§ 1621-1622, 1631, and 1641, title 50, United States Code, “National Emergencies.”

DoD Policies Related to the Use of DoD Title 10 Personnel Within the United States

The DoD established specific policies, which are applicable to the use of DoD title 10 personnel to support the DHS southern border security operations.

Defense Support of Civil Authorities

DoD Directive (DoDD) 3025.18 establishes policy for the execution and oversight of defense support of civil authorities (DSCA).²⁶ The Directive defines DSCA as:

[s]upport provided by U.S. Federal military forces, DoD civilians, DoD contract personnel, DoD Component assets, and National Guard forces...in response to requests for assistance from civil authorities for domestic emergencies, law enforcement support, and other domestic activities, or from qualifying entities for special events.

The DSCA is executed when “approved by the appropriate DoD official, or as directed by the President, within the United States” and other U.S. territories.

Additionally, Joint Publication 3-28 states that DoD title 10 personnel “may be called upon for defense support of civil authorities (DSCA) to support a whole-of government response...and have a historic and enduring role in supporting civil authorities during times of emergency, and this role is described in national defense strategy as a primary mission of DoD.” Joint Publication 3-28 establishes joint doctrine for the activities and performance of the military in DSCA operations.²⁷ Joint Publication 3-28 also prescribes joint doctrine for operations, education, and training for DSCA.²⁸ Specifically, it provides that DoD title 10 personnel provide support to civilian law enforcement agencies when “reacting to civil disturbances, conducting border security and counterdrug missions, preparing for antiterrorism operations, and participating in other related law enforcement activities.” Joint Publication 3-28 requires that the support is “consistent with the limits Congress placed on military support to law enforcement through the Posse Comitatus Act and other laws.”

²⁶ DoD Directive 3025.18, “Defense Support of Civil Authorities (DSCA),” December 29, 2010, (Incorporating Change 2, March 19, 2018).

²⁷ Joint Publication 3-28, “Defense Support of Civil Authorities,” July 31, 2013. Joint Publications are prepared under the direction of the Chairman of the Joint Chiefs of Staff.

²⁸ Joint Doctrine Publications are policies that provide fundamental principles that guide the employment of U.S. military forces in coordinated and integrated action toward a common objective. The doctrine within the policies promote “a common perspective from which to plan, train, and conduct military operations” and “represents what is taught, believed, and advocated as what is right (i.e., what works best).” The policies constitute official advice; however, the judgment of the commander is paramount in all situations.

Defense Support of Civilian Law Enforcement Agencies

DoD Instruction (DoDI) 3025.21 establishes DoD policy, assigns responsibilities, and provides procedures for DoD support to civilian law enforcement agencies, including responses to civil disturbances within the United States and its territories.²⁹ Additionally, DoDI 3025.21 generally prohibits DoD personnel from providing direct civilian law enforcement assistance within the United States and its territories, including:

- “(a) Interdiction of a vehicle, vessel, aircraft, or other similar activity.
- (b) A search or seizure.
- (c) An arrest; apprehension; stop and frisk; engaging in interviews, interrogations, canvassing, or questioning of potential witnesses or suspects; or similar activity.
- (d) Using force or physical violence, brandishing a weapon, discharging or using a weapon, or threatening to discharge or use a weapon except in self-defense, in defense of other DoD persons in the vicinity, or in defense of non-DoD persons, including civilian law enforcement personnel, in the vicinity when directly related to an assigned activity or mission.
- (e) Evidence collection; security functions; crowd and traffic control; and operating, manning, or staffing checkpoints.
- (f) Surveillance or pursuit of individuals, vehicles, items, transactions, or physical locations, or acting as undercover agents, informants, investigators, or interrogators.
- (g) Forensic investigations or other testing of evidence obtained from a suspect for use in a civilian law enforcement investigation in the United States unless there is a DoD nexus.”

However, DoDI 3025.21 provides that DoD title 10 personnel may provide certain indirect civilian law enforcement assistance. These activities include operating equipment for the detection, monitoring, and communication of the movement of air, sea, and surface traffic at the “geographic boundary of the United States,” under certain circumstances.³⁰

²⁹ DoD Instruction 3025.21, “Defense Support of Civilian Law Enforcement Agencies,” February 27, 2013, Incorporating Change 1, February 8, 2019.

³⁰ DoD Instruction 3025.21, “Defense Support of Civilian Law Enforcement Agencies,” February 27, 2013, Incorporating Change 1, February 8, 2019.

DoDI 3025.21 also provides that DoD title 10 personnel may provide certain direct civilian law enforcement assistance as part of a force protection measure and the DoD's use of force and inherent right to self-defense provisions.³¹ These activities include detentions, searches, and securing property of threatening individuals who pose a risk to the life and safety of DoD and Government personnel.

Arming and the Use of Force

DoDD 5210.56 establishes policy and assigns responsibilities for arming, carrying of firearms, and the use of force by DoD personnel performing security and protection, law and order, investigative, or counterintelligence duties, and for personal protection when related to the performance of official duties.³² The directive authorizes DoD personnel in the performance of their duties to use the reasonable amount of force necessary, including non-lethal and deadly force, based on the totality of the circumstances.³³ Lastly, DoDD 5210.56 is applicable to DoD title 10 personnel both on and off military installations world-wide, even when participating in operations such as DSCA.

Standing Rules for the Use of Force

The SRUF are procedures governing the use of force by U.S. commanders and their personnel during all DoD civil support, including military assistance to civil authorities. CJCS Instruction (CJCSI) 3121.01B includes the SRUF for operations within U.S. territories during DoD civil support.³⁴ The Instruction also provides that DoD title 10 personnel may retain the right of self-defense and the "defense of non-DoD persons in the vicinity if directly related to the assigned mission, or in defense of the protected property."

Additionally, the CJCSI 3121.01B provides guidance for the training of military personnel on how and when to use non-lethal and deadly force in self-defense. Specifically, the Instruction requires that all commanders "teach and train their personnel how and when to use non-lethal and deadly force in self-defense."

³¹ Specifically, DoDI 3025.21, Enclosure 3, authorizes "active participation in direct law-enforcement-type activities" to protect DoD personnel, equipment, and official guests, or "primarily for military purposes."

³² DoDD 5210.56, "Arming and the Use of Force," November 18, 2016.

³³ Less than lethal force may be used when reasonable to defend oneself or others from physical injury or death. Deadly force is justified when there is a reasonable belief that the subject of such force poses an imminent threat of death or serious bodily harm to a person.

³⁴ CJCSI 3121.01B, "Standing Rules of Engagement / Standing Rules for the Use of U.S. Forces," June 13, 2005. The SRUF is applicable to military forces supporting DHS southern border security operations.

Requests for Assistance

The DoD provides assistance to Federal agencies at the direction of the President or at the request of another Federal agency. According to the DoD Joint Publication 3-28, all DSCA requests are submitted to the DoD Office of the Executive Secretary.

RFAs should be coordinated with the: (1) OUSD(P), Deputy Assistant Secretary of Defense for Homeland Defense Integration and Defense Support of Civil Authorities; (2) CJCS; (3) ASD(HD&GS); (4) USD(C); (5) USNORTHCOM Staff; (6) Office of General Counsel; and (7) other Combatant Commands, as applicable. The DoDD 3025.18 provides six factors that must be considered when assessing RFAs.

1. Legality (compliance with laws).
2. Lethality (potential use of deadly force by or against DoD personnel).
3. Risk (safety of DoD personnel).
4. Cost (including the source of funding and the effect on the DoD budget).
5. Appropriateness (whether providing the requested support is in the interest of the DoD).
6. Readiness (impact on the DoD's ability to perform its other primary missions).

According to USNORTHCOM representatives, once an RFA is approved, the Office of the Secretary of Defense provides the Action Memorandum that outlines the nature of the support to be provided and whether the support will be provided on a reimbursable basis.³⁵

Chronology of DHS RFAs to the DoD for DoD Title 10 Personnel Supporting DHS Southern Border Security Operations

Between April 2018 and December 2019, the Secretary of Defense approved 31 DHS RFAs for DoD support of DHS southern border security operations. Of the 31 DHS RFAs that the Secretary of Defense approved, 11 DHS RFAs included DoD title 10 personnel supporting DHS southern border security operations.³⁶ These RFAs were coordinated through the OUSD(P), Deputy Assistant Secretary of Defense for Homeland Defense Integration and Defense Support of Civil Authorities; (2) CJCS; (3) ASD(HD&GS); (4) Office of General Counsel; and (5) USD(C), who

³⁵ DoDD 3025.18 requires all DHS RFAs to include a commitment to reimburse the DoD in accordance with the Stafford Act, Economy Act, or other authorities. DSCA support may be provided on a non-reimbursable basis only if required by law or if both authorized by law and approved by the appropriate DoD official. The reimbursement requirement may be waived if the support is provided in the normal course of military training or operations or if the support results in a benefit to the DoD or DoD personnel providing the support that is substantially equivalent to that which would otherwise be obtained from military operations or training.

³⁶ The other 20 DHS RFAs included title 32 personnel support of DHS southern border security operations, but did not include DoD title 10 personnel support of DHS southern border security operations.

reviewed the RFAs for legality, lethality, risk, cost, appropriateness, and readiness. The other 20 DHS RFAs that the Secretary of Defense approved were for title 32 support and were outside the scope of this evaluation. Table 1 depicts the 11 DHS RFAs approved by the Secretary of Defense for DoD title 10 support to DHS southern border security operations, including the DHS RFA number, approved date, date ended, and a description of what was approved.

Table 1. Chronology of DHS RFAs That Included DoD Title 10 Personnel

DHS RFA Number	Approved Date	End Date	Summary
RFA #7	October 26, 2018	December 15, 2018	The Secretary of Defense authorized the use of DoD title 10 personnel to execute missions in support of CBP. This included: <ul style="list-style-type: none"> • rotary wing aircraft with pilots and support personnel; • military planners to coordinate operations, engineering, medical, and logistic support; • engineering support personnel to build barriers at the ports of entry; and • medical support personnel to triage and treat up to 1,000 personnel every 24 hours.
RFA #9	November 16, 2018	December 15, 2018	The Secretary of Defense authorized a modification to DHS RFA 7 to include additional medical support for the urgent treatment of migrants.
RFA #11	November 18, 2018	December 15, 2018	The Secretary of Defense authorized deployment of DoD title 10 personnel to provide protection to CBP. The DoD title 10 personnel were authorized to protect CBP at ports of entry where migrant caravans posed a risk of disrupting CBP operations.
RFA #12	December 4, 2018	January 31, 2019	The Secretary of Defense authorized an extension of DoD title 10 personnel support from December 15, 2018, to January 31, 2019.
RFA #13	January 11, 2019	September 30, 2019	The Secretary of Defense authorized an extension of DoD title 10 personnel through September 30, 2019. The DHS RFA added MSC equipment operators and engineering support to install concertina wire over pedestrian barriers located in California and Arizona.

Table 1. Chronology of DHS RFAs That Included DoD Title 10 Personnel (cont'd)

DHS RFA Number	Approved Date	End Date	Summary
RFA #15	February 1, 2019	September 30, 2019	The Acting Secretary of Defense authorized a modification to DHS RFA 13, which added the CRF to protect CBP at the El Centro and San Diego, California, border sectors. These sectors were not previously designated in DHS RFA 11.
RFA #16	February 15, 2019	March 10, 2019	Memorialized the Acting Secretary of Defense's verbal authorization for USNORTHCOM to move personnel and execute missions in support of CBP near the Eagle Pass, Texas, ports of entry. This included: <ul style="list-style-type: none"> • rotary aircraft support personnel, • medical support personnel for life saving support, • the CRF, and • engineering support personnel to reinforce the port of entry.
RFA #19	March 18, 2019	September 30, 2019	The Secretary of Defense authorized support to CBP at and near ports of entry across the U.S. southern border. This included: <ul style="list-style-type: none"> • medical support personnel, • the CRF, • engineering support, and • rotary aircraft support personnel.
RFA #22	April 29, 2019	September 30, 2019	The Acting Secretary of Defense authorized an exception to the "no contact with migrants" policy in previously approved DHS RFAs and additional DoD support to help the DHS more effectively process unaccompanied migrant children, family units, and single adults along the U.S. southern border. This included: <ul style="list-style-type: none"> • high capacity transportation drivers, • operational personnel for meal distribution and welfare checks of individuals in custody, and • Command and Control personnel.
RFA #23	May 17, 2019	September 30, 2019	The Secretary of Defense authorized an increase of aerial detection and monitoring personnel and MSC equipment operators.

Table 1. Chronology of DHS RFAs That Included DoD Title 10 Personnel (cont'd)

DHS RFA Number	Approved Date	End Date	Summary
RFA #27	September 3, 2019	September 30, 2020	<p>The Secretary of Defense authorized DoD support to the DHS through September 30, 2020. This includes:</p> <ul style="list-style-type: none"> • aviation support personnel, • operational support personnel (high capacity transportation drivers are authorized until the support is contracted for, or November 19, 2019, whichever came first); • detection and monitoring personnel; and • the CRF.

Source: DoD OIG.

Finding A

The Use of DoD Title 10 Personnel to Support DHS Southern Border Security Operations Was Authorized by Federal Laws and Is Consistent With DoD Policies

The use of DoD title 10 personnel to support DHS southern border security operations was authorized by Federal laws and consistent with DoD policies. Specifically, the use of DoD title 10 personnel was authorized in the National Defense Authorization Act for Fiscal Year 2016, 10 U.S.C. § 274 (2018), and consistent with DoDI 3025.21.

Additionally, in all 9 DHS RFAs that contained a request for DoD title 10 personnel to perform direct or indirect civilian law enforcement activities, the Secretary of Defense approved civilian law enforcement assistance that was authorized by Federal laws and consistent with DoD policies.³⁷ Furthermore, based on these approvals from the Secretary of Defense, DoD Joint Staff personnel developed seven execute orders that included direct and indirect civilian law enforcement assistance that were authorized by Federal laws and DoD policies.³⁸

As a result of the Secretary of Defense approving the DHS RFAs and DoD Joint Staff personnel developing execute orders that included civilian law enforcement assistance authorized by Federal laws and consistent with DoD policies, DoD title 10 personnel supporting DHS southern border security operations complied with Federal laws and DoD policies.

³⁷ Two additional RFAs that authorized the use of DoD title 10 personnel to support DHS southern border security operations did not include civilian law enforcement assistance. We evaluated the RFAs that included direct or indirect civilian law enforcement because Congress asked the DoD OIG to review DoD title 10 personnel performing law enforcement assistance while supporting DHS southern border security operations and identify any potential Posse Comitatus Act violations. An Acting Secretary of Defense approved RFAs 15, 16, and 22, but for the purposes of this report, we use the title Secretary of Defense.

³⁸ According to the DoD Dictionary of Military and Associated Terms, an execute order is an order issued by the Chairman of the Joint Chiefs of Staff, at the direction of the Secretary of Defense, to implement a decision by the President to initiate military operations or an order to initiate military operations, as directed.

The Use of DoD Title 10 Personnel to Support DHS Southern Border Security Operations Was Authorized by Federal Laws and Is Consistent With DoD Policies

The use of DoD title 10 personnel to support DHS southern border security operations was authorized by Federal laws and is consistent with DoD policies. The National Defense Authorization Act for Fiscal Year 2016 and 10 U.S.C. § 274 (2018), as discussed in the Background section of this report, are Federal laws which authorize the DoD to provide direct and indirect civilian law enforcement assistance.³⁹ The Posse Comitatus Act prohibits “direct military involvement with civilian law enforcement, absent congressional or constitutional authorization.”

DoDI 3025.21 generally prohibits DoD personnel from providing direct civilian law enforcement assistance within the United States and its territories. However, DoDI 3025.21 also provides that DoD title 10 personnel may provide certain direct civilian law enforcement assistance as part of a force protection measure and the DoD’s use of force and inherent right to self-defense provisions. DoDI 3025.21 also provides that DoD title 10 personnel may perform certain indirect civilian law enforcement assistance when supporting civilian law enforcement agencies, such as detection and monitoring activities.⁴⁰

In a November 20, 2018 White House Decision Memorandum, the President authorized the use of “units and personnel of the Armed Forces of the United States” to temporarily support the DHS by protecting CBP and other U.S. Government personnel and by protecting the Federal functions they perform. The memorandum also authorized the Secretary of Defense to deploy DoD title 10 personnel to perform “military protective activities that are reasonably necessary” to ensure the protection of Federal personnel.⁴¹ The military protective activities discussed in the White House Decision Memorandum included direct civilian law enforcement assistance, including a show of force (lethal force, when necessary), crowd control, temporary detention, and cursory searches.⁴²

³⁹ 10 U.S.C. § 274 (2018) states that the Secretary of Defense may make DoD personnel available “only to the extent that such support does not involve direct participation by such personnel in a civilian law enforcement operation unless such direct participation is otherwise authorized by law.”

⁴⁰ According to the DoD Dictionary of Military and Associated Terms, “detection” refers to the perception of an object of possible military interest, but unconfirmed by recognition.

⁴¹ “Protect CBP personnel” refers to actions taken to mitigate hostile acts by migrants against CBP personnel performing their Federal functions as well as against other Federal, state, and local law enforcement personnel within property controlled by CBP at or adjacent to a designated port of entry.

⁴² DoDI 3025.21 identifies the activities identified in the White House Decision Memorandum as “direct assistance” and authorizes these actions in certain circumstances. DoDI 3025.21 is discussed further in the Background Section of this report.

Between October 2018 and December 2019, the Secretary of Defense approved 11 DHS RFAs submitted by DHS. We reviewed the 11 DHS RFAs and found that nine DHS RFAs included the request for direct and indirect civilian law enforcement assistance by DoD title 10 personnel.⁴³ Using the 11 RFAs, the DoD Joint Staff personnel developed nine execute orders for DoD title 10 personnel to use when supporting DHS southern border security operations.⁴⁴ We reviewed the nine Joint Staff execute orders and found that seven included civilian law enforcement assistance to the DHS that were authorized in Federal laws and were consistent with DoD policies.⁴⁵ Additionally, we reviewed the civilian law enforcement assistance included in the execute orders to determine whether it was approved by the Secretary of Defense, as requested in the DHS RFAs. We then reviewed the 11 DHS RFAs and the nine Joint Staff execute orders to determine whether the Secretary of Defense-approved civilian law enforcement assistance was authorized in accordance with the National Defense Authorization Act for Fiscal Year 2016; 10 U.S.C. § 274 (2018); the Posse Comitatus Act; and the November 20, 2018, White House Decision Memorandum, and was consistent with DoDI 3025.21. We evaluated the nine RFAs that included direct or indirect civilian law enforcement because Congress asked the DoD OIG to review DoD title 10 personnel performing law enforcement assistance while supporting DHS southern border security operations and identify any potential violations of the Posse Comitatus Act.

The Secretary of Defense Approved Civilian Law Enforcement Assistance That Was Authorized by Federal Laws and Consistent With DoD Policies

The Secretary of Defense approved civilian law enforcement assistance that was authorized by Federal laws and was consistent with DoD policies. We reviewed the 11 DHS RFAs to determine whether the DHS RFAs included any direct civilian law enforcement assistance that DoD title 10 personnel were not authorized to perform, such as interviews and interrogations, evidence collection, pursuit of individuals, and forensic investigations. We determined that the request for civilian law enforcement assistance in the DHS RFAs did not include these activities.

Additionally, all nine of the DHS RFAs that contained a request for direct civilian law enforcement assistance were approved by the Secretary of Defense in accordance with the National Defense Authorization Act for Fiscal Year 2016;

⁴³ The other two DHS RFAs did not include any direct civilian law enforcement assistance or detection and monitoring assistance. Instead, these two RFAs included the use of DoD title 10 personnel to perform duties such as rotary wing aircraft pilots and support personnel, engineering support personnel, and medical support personnel.

⁴⁴ We reviewed an additional 145 USNORTHCOM, ARNORTH, and AFNORTH execute orders, operation orders, fragmentary orders, warning orders, and one USNORTHCOM standard operating procedure, but the documents did not address specific direct civilian law enforcement assistance or detection and monitoring assistance.

⁴⁵ The other two execute orders did not include civilian law enforcement assistance.

10 U.S.C. § 274 (2018); the Posse Comitatus Act; DoDI 3025.21; and the November 20, 2018 White House Decision Memorandum. Specifically, DoDI 3025.21 provides that DoD title 10 personnel may provide certain direct civilian law enforcement assistance as part of a DoD force protection measure and the DoD's use of force and inherent right to self-defense provisions. With the exception of the CRF, the primary purpose for DoD title 10 personnel to perform direct civilian law enforcement activities in support of DHS southern border security operations is for DoD force protection or self-defense.

The CRF was authorized in the November 20, 2018 White House Decision Memorandum, to provide direct civilian law enforcement assistance for matters beyond DoD force protection or self-defense. Specifically, the November 20, 2018 White House Decision Memorandum included the President's authorization for DoD title 10 personnel to perform civilian law enforcement assistance, including a show of force, crowd control, temporary detention, and conducting cursory searches.

For example, in DHS RFA 11, the Secretary of Defense clearly defined the direct civilian law enforcement assistance that was approved for DoD title 10 personnel to perform, and states:

[p]rotect CBP personnel means to take actions to mitigate hostile actions by migrant or other individuals attempting to enter the POE [port of entry] against CBP personnel performing their Federal functions within property controlled by CBP at or adjacent to a designated POE, including but not limited to a show of force, crowd control, temporary detention, and cursory search necessary for the protection of CBP personnel performing their Federal functions within property controlled by CBP at or adjacent to designated POEs. Individuals who are detained will only be detained for a brief period of time to resolve an imminent threat to the safety and security of CBP and DoD personnel within property controlled by CBP at or adjacent to the designated POE and to effectuate the orderly transfer of such individuals to CBP or other law enforcement personnel as soon as possible (CBP expectation is seconds to minutes, depending on the situation).

Furthermore, the Secretary of Defense approved indirect civilian law enforcement assistance in the nine DHS RFAs, including detection and monitoring, in accordance with the National Defense Authorization Act for Fiscal Year 2016; 10 U.S.C. § 274 (2018); the Posse Comitatus Act; DoDI 3025.21; and the November 20, 2018 White House Decision Memorandum. Specifically, 10 U.S.C. § 274 (2018) authorizes, and DoDI 3025.21 further provides, that DoD title 10 personnel may perform detection and monitoring assistance, when approved by the Secretary of Defense.

~~(CUI)~~ In DHS RFAs 13, 15, 23, and 27, the Secretary of Defense approved DoD title 10 personnel to operate MSC equipment.⁴⁶ [REDACTED]

[REDACTED] According to DHS RFA 13, the duty of the MSC equipment operators was to “[s]upport Border Patrol agents by monitoring remote video surveillance system cameras in mobile surveillance equipped vehicles in order to provide real time situational awareness to Border Patrol agents.”⁴⁷

~~(CUI)~~ The DHS RFAs that approve DoD title 10 personnel to operate MSC equipment also describe how DoD title 10 personnel should respond to a detection of civilians or migrants in the area that they are monitoring for the DHS. These DHS RFA descriptions help to ensure that DoD title 10 personnel comply with Federal laws and DoD policies. For example, DHS RFA 13 states that “[i]n the event of a detection (of illegal aliens) in the vicinity of the MSC site, Border Patrol agents will respond to identify, classify, and mitigate the situation. [REDACTED]

[REDACTED] Figure 2 depicts an example of the MSC equipment that DoD title 10 personnel were approved to operate.



Figure 2. MSC Equipment Operated by DoD Title 10 Personnel

Source: USBP.

⁴⁶ Although the title “MSC equipment operator” includes the word surveillance, when we reviewed the duties that MSC operators perform, we determined that the duties that the Secretary of Defense approved in the DHS RFAs were actually detection and monitoring assistance. Federal law authorizes both detection and monitoring assistance and surveillance.

⁴⁷ According to DHS RFA 13, “DoD personnel manning these surveillance systems will enhance situational awareness, and enable Border Patrol agents to respond more effectively to potential illicit traffic.”

DoD Joint Staff Personnel Developed Execute Orders That Included Civilian Law Enforcement Assistance Authorized in Federal Laws and That Are Consistent with DoD Policies

DoD Joint Staff personnel developed seven Joint Staff execute orders with direct and indirect civilian law enforcement assistance that were authorized by Federal laws and that are consistent with DoD policies. Specifically, we determined that the civilian law enforcement assistance was authorized by the National Defense Authorization Act for Fiscal Year 2016; 10 U.S.C. § 274 (2018); Posse Comitatus Act; and the November 20, 2018 White House Decision Memorandum and are consistent with DoDI 3025.21.

~~(CUI)~~ DoD Joint Staff personnel used the DHS RFAs approved by the Secretary of Defense to develop four execute orders with direct civilian law enforcement assistance, [REDACTED]. Additionally, the execute orders restricted DoD title 10 personnel from performing other direct civilian law enforcement assistance, such as [REDACTED].

[REDACTED] For example, one execute order, dated November 22, 2018, states that “[p]rotection of CBP personnel and U.S. Government personnel performing federal functions will be in accordance with the SRUF and may require actions including, but not limited to, [REDACTED].

[REDACTED] The execute order also states that, as approved in DHS RFA 11, [REDACTED].

~~(CUI)~~ Additionally, DoD Joint Staff personnel used the DHS RFAs approved by the Secretary of Defense in DHS RFAs 13, 15, 23, and 27 to develop six execute orders with indirect civilian law enforcement assistance. Specifically, the six execute orders include [REDACTED].

[REDACTED].⁴⁸ For example, one execute order, dated May 15, 2019, authorized the [REDACTED].

The execute order states that:

~~(CUI)~~ [REDACTED]

⁴⁸ ~~(CUI)~~ We found that in the December 20, 2019 execute order, the DoD Joint Staff described the activities performed by the ground-based surveillance systems as “surveillance” instead of detection and monitoring assistance. Specifically, the execute order states [REDACTED].

[REDACTED] Although DoD Joint Staff personnel used the word surveillance, we determined that the activities described in the execute order were detection and monitoring. Federal law authorizes both detection and monitoring, and surveillance.

(CUI) [REDACTED]

[REDACTED] DoD personnel in a title 10 status may detect, monitor, and communicate the movement of surface, maritime, and air traffic outside the geographic boundary of the United States and within the United States, not to exceed 25 miles of the boundary of the United States if the initial detection occurred outside the boundary.

The Approved DHS Requests for Assistance and the Execute Orders Helped to Ensure Compliance With Federal Laws and DoD Policies

As a result, the approved DHS RFAs and execute orders helped to ensure that DoD title 10 personnel supporting DHS southern border security operations did not violate Federal laws or DoD policies, including the Posse Comitatus Act. Finding B provides more information on DoD title 10 personnel's compliance with Federal laws and DoD policies when performing duties to support DHS southern border security operations.

Finding B

The DoD's Support of DHS Southern Border Security Operations Complied With Federal Laws and DoD Policies

Between October 24, 2018, and December 31, 2019, DoD title 10 personnel supporting DHS southern border security operations complied with applicable Federal laws and DoD policies. Specifically, we found that DoD title 10 personnel:

- only performed duties that were approved by the Secretary of Defense in a DHS RFA; and
- had limited contact with civilians or migrants and contact that did occur was acceptable under DoDI 3025.21.⁴⁹

This occurred because the DoD title 10 personnel and CBP personnel implemented policies and procedures to help ensure DoD title 10 personnel complied with applicable Federal laws and DoD policies. For example, the:

- DoD provided all DoD title 10 personnel with quick reference cards that identified the SRUF for the southern border; and
- DoD and the DHS established procedures to limit DoD title 10 personnel's contact with civilians or migrants.

As a result of the DoD title 10 personnel supporting DHS southern border security operations, DoD title 10 personnel helped the DHS carry out its mission to secure the U.S. southern border.

DoD Title 10 Personnel Support to DHS Southern Border Security Operations Complied With Federal Laws and DoD Policies

Between October 24, 2018, and December 31, 2019, DoD title 10 personnel supporting DHS southern border security operations complied with applicable Federal laws and DoD policies. Specifically, we found that DoD title 10 personnel performed duties that were approved by the Secretary of Defense in a DHS RFA and only had limited contact with civilians or migrants and contact that did occur was acceptable under DoDI 3025.21.

⁴⁹ DoDI 3025.21 generally prohibits DoD personnel from participating in certain direct law enforcement functions, such as search and seizure, arrest and apprehension, evidence collection, and surveillance of individuals and vehicles, when providing assistance to civilian law enforcement agencies. We considered any contact with migrants that did not include these activities to be "authorized contact."

DoD Title 10 Personnel Only Performed Duties That Were Approved by the Secretary of Defense in a DHS Request for Assistance

We found that between October 24, 2018, and December 31, 2019, DoD title 10 personnel supporting DHS southern border security operations performed duties that were approved by the Secretary of Defense in a DHS RFA. On April 4, 2018, the President of the United States signed a Presidential Memorandum for the Secretary of Defense, the U.S. Attorney General, and the Secretary of Homeland Security that directed the Secretary of Defense to support DHS southern border security operations. The DoD provided support to the DHS for general missions, tasks, or activities that were outlined in the DHS RFA, such as providing aviation support to CBP agents, installing concertina wire along the border, and staffing MSC and RVSS sites.⁵⁰

We reviewed all 11 DHS RFAs that included DoD title 10 personnel support to identify the DoD title 10 personnel duties that were approved by the Secretary of Defense and authorized by Federal laws and consistent with DoD policies. In the DHS RFA approved for FY 2020, the DoD was approved to perform duties that included aviation support; CRF duties; detection and monitoring support, such as operating MSC and RVSS sites; firearms range safety officers; and vehicle maintenance.

Between February and March 2020, we observed DoD title 10 personnel at various sites near the ports of entry in El Paso, San Diego, and Tucson as part of our efforts to determine whether DoD title 10 personnel were conducting duties that were approved in the FY 2020 DHS RFA. We determined that all of the duties we observed, such as the operation of MSC or RVSS equipment, were approved by the Secretary of Defense in the FY 2020 DHS RFA.

Furthermore, using a nonstatistical sample of units deployed as of January 2020 to support DHS southern border security operations, we selected 54 DoD title 10 personnel to interview during February and March 2020.⁵¹ All 54 of the DoD title 10 personnel that we interviewed described the duties that they perform to support DHS southern border security operations. We determined that all of the duties described were approved by the Secretary of Defense in a DHS RFA and did not violate Federal law or DoD policies. In addition, we asked a series of questions to determine whether DoD title 10 personnel had performed duties that were

⁵⁰ The Secretary of Defense approves or denies those DHS RFAs. The Acting Secretary of Defense approved two DHS RFAs in February 2019 because the Secretary of Defense had not yet been nominated and confirmed.

⁵¹ The 54 DoD title 10 personnel included 46 soldiers and 8 Marines located in or around El Paso, San Diego, and Tucson.

not approved by the Secretary of Defense in an RFA. None of the 54 DoD title 10 personnel identified any duties other than those approved by the Secretary of Defense in the FY 2020 DHS RFA.⁵²

~~(CUI)~~ Additionally, we interviewed 34 personnel from DHS and DoD leadership, including the USBP Alliance to Combat Transnational Threats Director and the [REDACTED] for the Army 3rd Brigade Combat Team.⁵³ The USBP Alliance to Combat Transnational Threats Director and the [REDACTED] for the 3rd Brigade Combat Team told us that there were established procedures to ensure DoD title 10 personnel only performed duties approved by the Secretary of Defense in a DHS RFA. Specifically, they said that any exceptions to the daily duties performed were coordinated for approval through the DHS, as well as through the DoD. For example, the USBP Alliance to Combat Transnational Threats Director described an occasion when a Border Patrol Station had an item that required welding. The USBP did not have personnel capable of performing the welding task; however, USBP personnel learned that one of the soldiers assigned near the Border Patrol Station was a trained welder. The Border Patrol Station Agent in Charge forwarded a request to the 3rd Brigade Combat Team to request that the soldier perform the one-time welding task, since welding was not a daily duty performed by DoD title 10 personnel. Ultimately, the soldier was allowed to perform the welding task because the task was not a law enforcement function or restricted by any other Federal law.

~~(CUI)~~ Our interviews also included personnel from the OUSD(P), ARNORTH, and JTF-North to identify any reports of DoD title 10 personnel performing duties not approved by the Secretary of Defense in a DHS RFA, between October 24, 2018, and December 31, 2019. The Deputy Assistant Secretary of Defense for Homeland Defense Integration and Defense Support of Civil Authorities told us that he was not aware of any DoD title 10 personnel performing duties not approved by the Secretary of Defense in the DHS RFA. Furthermore, none of the ARNORTH or JTF-North personnel that we interviewed, including the [REDACTED] [REDACTED], were aware of any DoD title 10 personnel performing duties not approved by the Secretary of the Defense in a DHS RFA.

⁵² We also interviewed title 32 personnel at the ports of entry in El Paso and Tucson (California did not have title 32 personnel supporting DHS southern border security operations) to confirm that, for the title 32 and DoD title 10 personnel, work locations were geographically separated. All of the title 32 personnel we interviewed during February and March 2020 confirmed that they did not interact with DoD title 10 personnel at the ports of entry.

⁵³ ~~(CUI)~~ These 34 personnel included DHS personnel at the DHS Headquarters in Washington D.C. and DHS leaders in El Paso Tucson, and San Diego. Additionally, the 34 personnel included DoD title 10 personnel in [REDACTED] at the southern border, such as the 3rd Brigade Combat Team's [REDACTED]. Finally, the DoD personnel also included DoD leaders from OUSD (P), JTF-NORTH, and ARNORTH.

DoD Title 10 Personnel Had Limited Contact With Civilians or Migrants and Contact That did Occur was Acceptable Under DoDI 3025.21

We found that, between October 24, 2018, and December 31, 2019, DoD title 10 personnel supporting DHS southern border security operations had limited contact with civilians or migrants and contact that did occur was acceptable under DoD Instruction (DoDI) 3025.21. As discussed in the Background section of this report, DoDI 3025.21 establishes DoD policy, assigns responsibilities, and provides procedures for DoD support to civilian law enforcement agencies, including responses to civil disturbances within the United States and its territories.⁵⁴ DoDI 3025.21 generally prohibits DoD personnel from participating in certain direct law enforcement functions, such as search and seizure, arrest and apprehension, evidence collection, and surveillance of individuals and vehicles, when providing assistance to civilian law enforcement agencies.⁵⁵

We reviewed the Commander's Critical Information Requirement reports from October 24, 2018, through December 16, 2019.⁵⁶ According to ARNORTH personnel, the Commander's Critical Information Requirement reports are used by USNORTHCOM and ARNORTH to document DoD title 10 personnel encounters with civilians or migrants; response times of the USBP agents; and the nature, type, and duration of contact that DoD title 10 personnel had with civilians or migrants. We determined that DoD title 10 personnel reported 183 encounters with civilians or migrants along the U.S. southern border during that time. We reviewed the details described in the Commander's Critical Information Requirements reports for each incident to determine whether DoD title 10 personnel reported having unauthorized contact with civilians or migrants or performed law enforcement duties, such as searching, detaining, or apprehending civilians or migrants. We did not identify any instances in our review of the 183 encounters recorded in the Commander's Critical Information Requirement reports of unauthorized contact by DoD title 10 personnel with civilians or migrants or that DoD title 10 personnel performed law enforcement duties.

⁵⁴ DoD Instruction 3025.21, "Defense Support of Civilian Law Enforcement Agencies," February 27, 2013, Incorporating Change 1, February 8, 2019.

⁵⁵ As discussed in the Background section of this report, DoDI 3025.21 provides that DoD title 10 personnel may perform certain indirect activities when supporting civilian law enforcement agencies. DoDI 3025.21 states that DoD personnel are prohibited from providing "[s]urveillance or pursuit of individuals, vehicles, items, transactions, or physical locations, or acting as undercover agents, informants, investigators, or interrogators."

⁵⁶ The DoD Dictionary of Military and Associated Terms defines a Commander's Critical Information Requirement as information identified by the commander as being critical to facilitating timely decision making. The USNORTHCOM, ARNORTH, and JTF-North used shared Commander's Critical Information Requirement reports to track and report significant activities along the U.S. southern border, such as encounters between DoD title 10 personnel and civilians or migrants.

~~(CUI)~~ For the 183 encounters discussed above, the reports documented that, when migrants approached DoD title 10 personnel providing support to DHS southern border security operations, DoD title 10 personnel generally asked the migrants to stop and wait for USBP.⁵⁷ For example, [REDACTED]

[REDACTED]

Additionally, during our review of the reported 183 encounters, we identified three instances when DoD title 10 personnel provided lifesaving support. For example, in one instance, a family crossed the U.S. southern border and entered a canal in the El Paso sector. The woman and her child began to struggle in the fast moving current and a nearby Army soldier saw them go underwater. The soldier jumped into the canal and saved them. The soldier remained with the woman and child until CBP arrived and assumed control of the situation.

Furthermore, between February and March 2020, we observed DoD title 10 personnel conducting their missions as MSC and RVSS equipment operators supporting DHS southern border security operations to determine whether DoD title 10 personnel had unauthorized contact with civilians or migrants. We also interviewed the 54 DoD title 10 personnel that we sampled and asked them to describe instances that included DoD title 10 personnel contact with civilians and migrants. We did not observe any unauthorized contact with civilians or migrants. Additionally, none of the 54 DoD title 10 personnel we interviewed described any instances of unauthorized contact with civilians or migrants or instances when they performed unauthorized law enforcement duties. Specifically, none of the personnel we interviewed reported that they had detained, searched, or seized any property from any civilians or migrants during the support of DHS southern border security operations. DoD title 10 personnel told us that they did not interact with civilians or migrants except to provide them with food, water, or medical care.

⁵⁷ DoD title 10 personnel did not always ask migrants to “stop and wait.” Specifically, the Commander’s Critical Information Requirement reports documented instances when the DoD title 10 personnel provided blankets, food, water, and medical care.

~~(CUI)~~ In addition to the sample of 54 DoD title 10 personnel we interviewed during February and March 2020, we interviewed personnel from OUSD(P), ARNORTH, and JTF-NORTH to identify instances when DoD title 10 personnel had unauthorized contact with civilians or migrants. The Deputy Assistant Secretary of Defense for Homeland Defense Integration and Defense Support of Civil Authorities was not aware of any instances of unauthorized contact between DoD title 10 personnel and civilians or migrants or of any DoD title 10 personnel that performed law enforcement duties. Furthermore, none of the ARNORTH or JTF-North personnel interviewed, including the [REDACTED], were aware of any unauthorized contact between DoD title 10 personnel and civilians or migrants, nor were they aware of any DoD title 10 personnel that performed law enforcement duties.

We also interviewed CBP and USBP personnel, asking them to describe instances when DoD title 10 personnel had contact with civilians and migrants to identify instances of unauthorized contact by DoD title 10 personnel with civilians or migrants or instances that DoD title 10 personnel performed law enforcement duties while supporting DHS southern border security operations. We interviewed CBP's Pentagon Liaison Agent, the USBP Alliance to Combat Transnational Threats Director, the USBP Associate Chief of Law Enforcement Operations Directorate, and USBP and Office of Field Operations agents in the El Paso, San Diego, and Tucson sectors.⁵⁸ They all told us that they were not aware of any unauthorized contact between DoD title 10 personnel and civilians or migrants or of any DoD title 10 personnel performing law enforcement duties while supporting DHS southern border security operations.

Furthermore, we asked the DoD OIG, the DHS OIG, and the Service IGs to identify hotline complaint reports they received of unauthorized contact by DoD title 10 personnel with civilians or migrants or any hotline complaint reports that DoD title 10 personnel performed law enforcement duties while supporting DHS southern border security operations. None of the agencies identified any hotline complaint reports of DoD title 10 personnel having unauthorized contact with civilians or migrants or performing law enforcement duties while supporting DHS southern border security operations.

During February and March 2020, we also contacted non-governmental organizations in El Paso, San Diego, and Tucson and asked if they were aware of any instances when DoD title 10 personnel had unauthorized contact with civilians or

⁵⁸ CBP has a liaison assigned to the Pentagon who coordinates the terms and requirements of any DHS RFA.

migrants.⁵⁹ Specifically, we interviewed members of the Border Network for Human Rights and the Annunciation House in El Paso. We also interviewed members of The Immigration Center for Women and Children in San Diego. None of the members of the three non-governmental organizations that we spoke to reported any instances of unauthorized contact by DoD title 10 personnel with civilians or migrants. We did not receive a response from five other non-governmental organizations that we contacted, which included the American Friends Service Committee, and the U.S.–Mexico Border Philanthropy Partnership in San Diego; and the No More Deaths organization, the Tucson Samaritans, and the Humane Borders in Tucson.

DoD and CBP Personnel Implemented Policies and Procedures to Help Ensure DoD Title 10 Personnel Complied With Applicable Federal Laws and DoD Policies

DoD and CBP personnel implemented policies and procedures to help ensure that DoD title 10 personnel complied with applicable Federal laws and DoD policies, such as providing DoD title 10 personnel with SRUF quick reference cards and limiting their contact with civilians or migrants.⁶⁰ As discussed in Finding A of this report, Federal laws and DoD policies authorized specific direct and indirect law enforcement assistance, such as a show of force, crowd control, temporary detention, conducting cursory searches, and performing detection and monitoring, when DoD title 10 personnel operate within the United States.

⁵⁹ In case the non-governmental organizations were not inherently aware of what would constitute unauthorized encounters or law enforcement duties, we asked the members of the non-governmental organizations whether they were aware of any abuse or direct engagement with civilians or migrants by the DoD title 10 personnel supporting DHS southern border security operations.

⁶⁰ We requested that JTF-North provide a comparison, by billet, of all positions approved in the DHS RFAs and those of assigned personnel. The JTF-North requested the ARNORTH provide a response. ARNORTH notified us that the response would be delayed because of the requirements associated with its response to the coronavirus disease-2019 pandemic. As of June 30, 2020, ARNORTH had not provided the requested information.

The DoD Provided Standing Rules for the Use of Force Quick Reference Cards to DoD Title 10 Personnel

~~(CUI)~~ The DoD provided DoD title 10 personnel quick reference cards that identified the SRUF for the U.S. southern border. The SRUF are procedures governing the use of force by U.S. military commanders and their personnel during all DoD civil support, including military assistance to civil authorities, which provide that DoD title 10 personnel may retain the right of self-defense. [REDACTED]

[REDACTED] The SRUF allows DoD title 10 personnel to defend themselves and others when it is necessary under the immediate threat of death or serious injury, but also requires DoD title 10 personnel to de-escalate any interaction, if possible. Furthermore, the SRUF requires that DoD title 10 personnel provide medical care when necessary to save lives.

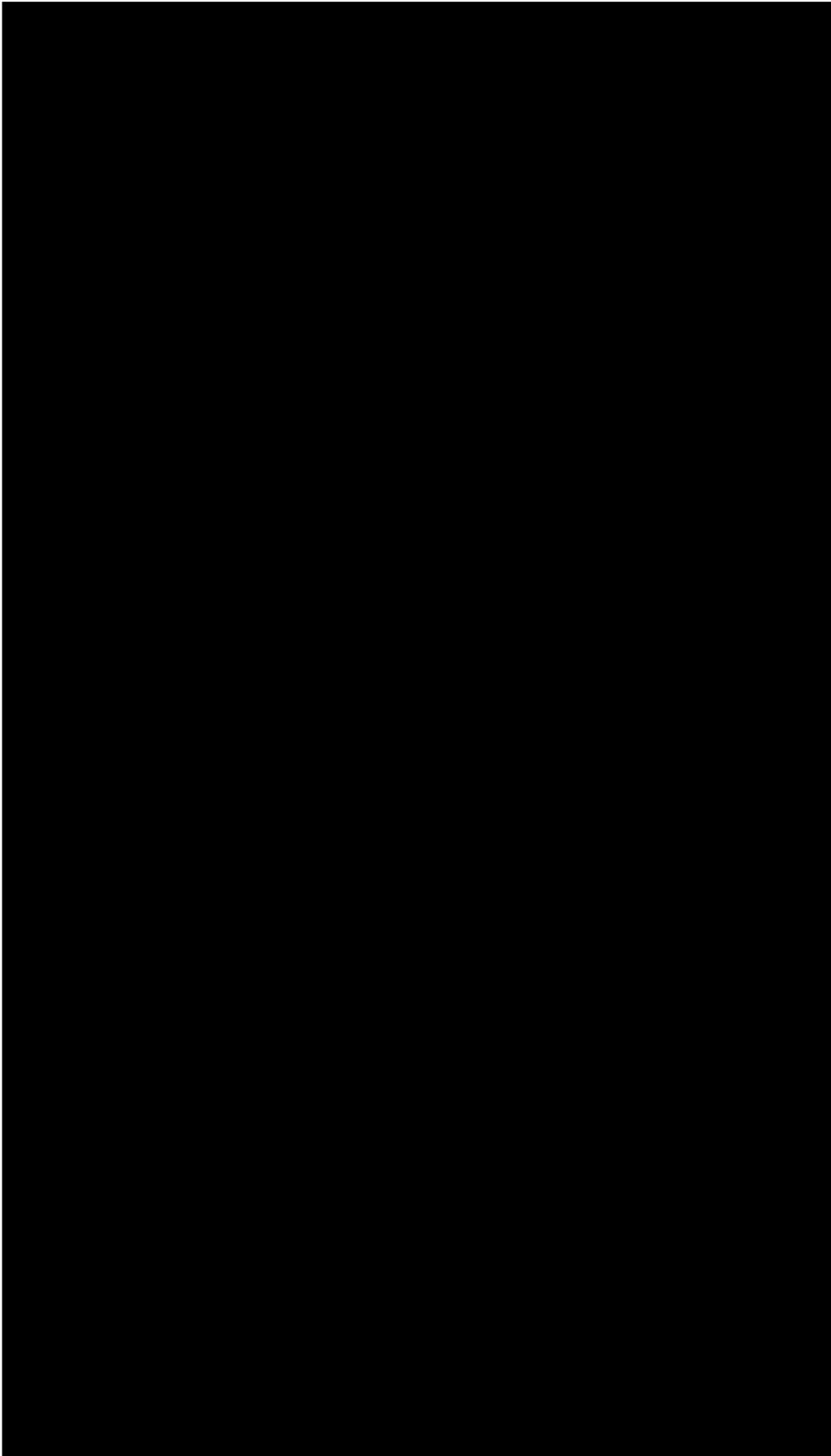
To determine whether the DoD provided SRUF quick reference cards to all DoD title 10 personnel supporting the DHS southern border security operations, we used a nonstatistical sample of units deployed to support DHS southern border security operations as of January 2020 and selected 54 DoD title 10 personnel to interview.⁶¹ Specifically, we sampled DoD title 10 personnel assigned to the 3rd Brigade Combat Team in San Diego; Tucson; and El Paso, to determine whether DoD title 10 personnel carried their SRUF cards. We also sampled DoD title 10 personnel assigned to the 3rd Battalion, 4th Marines, in San Diego, and DoD title 10 personnel assigned to the Army 519th Military Police Battalion in San Ysidro, California, to determine whether those DoD title 10 personnel carried their SRUF cards.

~~(CUI)~~ We determined that 48 of the 54 (89 percent) DoD title 10 personnel were carrying an SRUF quick reference card that their respective units issued or stated that they carried the SRUF quick reference cards while performing their duties.⁶² The remaining 6 of 54 (11 percent) DoD title 10 personnel sampled told us they were not issued an SRUF quick reference card, but we determined that they did not need to carry the card because their duties would not bring them into direct contact with migrants at any time.⁶³ The DoD title 10 personnel we interviewed during February and March 2020 told us they would use the cards if they encountered any civilians or migrants. Figures 3 and 4 depict the front and back of the SRUF quick reference cards.

⁶¹ There is no DoD policy that requires SRUF cards be issued to DoD title 10 personnel. Instead, issuing the SRUF cards was a practice used by commanders to aid DoD title 10 personnel providing support to DHS southern border security operations.

⁶² Finding C addresses DoD title 10 personnel's training and understanding of the SRUF.

⁶³ ~~(CUI)~~ None of the [REDACTED] personnel and [REDACTED] that we interviewed during February and March 2020 performed activities that would cause them to encounter civilians or migrants during the course of their duties.



The DoD and DHS Established Procedures to Limit DoD Title 10 Personnel's Contact With Civilians or Migrants

~~(CUI)~~ The DoD and the DHS established procedures to limit DoD title 10 personnel's contact with civilians or migrants. Specifically, according to the January 2019 DHS RFA, "Border Patrol agents will maintain a [REDACTED] response posture" when DoD title 10 personnel reported civilians or migrants in a monitored area. Additionally, military commanders directed DoD title 10 personnel not to apprehend or detain civilians or migrants before USBP agents arrived. Furthermore, we observed that each MSC site had a binder that contained information to help MSC equipment operators respond to encounters with civilians or migrants. Finally, we also observed CRF and CBP officials practicing procedures to limit contact, such as a process to minimize the DoD title 10 personnel role in the temporary detention of civilians or migrants and transferring protesters to CBP for further processing during crowd control operations.⁶⁴

~~(CUI)~~ To determine whether the DoD and the DHS established procedures to limit the contact of DoD title 10 personnel with civilians or migrants, we reviewed all DHS RFAs approved between October 2018 and December 2019 to identify USBP's requirement for response to reports of migrants and civilian encounters. We found that, beginning in January 2019, the DHS and the DoD included a requirement in the DHS RFA that the USBP must respond to reports of migrant encounters [REDACTED]. This requirement is also included in the FY 2020 DHS RFA approved on September 3, 2019.

~~(CUI)~~ We also reviewed the Commander's Critical Information Requirement reports from October 24, 2018, through December 16, 2019, for the USBP response times to locations of civilians or migrants reported by DoD title 10 personnel. We determined that, generally, the USBP agents responded to DoD title 10 personnel reports of civilians or migrants [REDACTED]. Specifically, we reviewed the entries for the Commander's Critical Information Requirement reports from 2019 and determined that in 171 instances (85.5 percent) reported, the USBP responded [REDACTED]. For example, on one occasion, a pregnant migrant approached DoD title 10 personnel at an MSC equipment site near Tucson. DoD title 10 personnel observed that the migrant was injured, offered her water, and then notified the USBP. The DoD title 10 personnel reported having no further contact with the migrant after they provided her with water and reported that the USBP responded [REDACTED].

⁶⁴ On March 9, 2020, during our visit to San Ysidro, the CRF was activated to provide CBP assistance at the San Ysidro Land port of entry. We observed the CRF as they performed exercises in preparation for performing their duties at the port of entry.

(CUI) [REDACTED]
 [REDACTED] [REDACTED] [REDACTED]
 [REDACTED] [REDACTED]
 [REDACTED] [REDACTED]
 [REDACTED] [REDACTED]
 [REDACTED]
 [REDACTED] [REDACTED]

(CUI) We did not identify any reports of contact between DoD title 10 personnel and civilians or migrants where DoD title 10 personnel apprehended or detained civilians or migrants in our review of the Commander’s Critical Information Requirement reports provided by USNORTHCOM, ARNORTH, and JTF-North for the same period. For example, on one occasion, a group of seven civilians or migrants approached an MSC site near Eagle Pass. DoD title 10 personnel notified the USBP, but the group left the site before the USBP agent arrived. Approximately 2 hours later, the same group approached the same MSC site. [REDACTED]

[REDACTED] The DoD title 10 personnel did not detain migrants and, instead, told the USBP agent which direction the group had departed. Additionally, during our interviews of ARNORTH, JTF-North, and DoD title 10 leaders assigned to support DHS southern border security operations in El Paso, San Diego, and Tucson, each of the leaders told us that they had instructed the DoD title 10 personnel operating the MSC equipment sites not to detain civilians or migrants.⁶⁵

(CUI) [REDACTED]
 [REDACTED] [REDACTED] [REDACTED]
 [REDACTED] [REDACTED]. At each of the MSC sites visited, the MSC equipment operators told us that when they detect movement on the MSC equipment and confirm it to be human, they contact USBP agents. [REDACTED]
 [REDACTED] [REDACTED]

Furthermore, during February and March 2020, when we visited DoD title 10 personnel conducting their missions at MSC sites near El Paso, San Diego, and Tucson, we observed that each MSC equipment site had a binder that contained information to help MSC equipment operators respond to encounters with civilians or migrants. In the binders, we found the SRUF quick reference cards

⁶⁵ As discussed in the Background section of this report, the restriction of the movement of civilians or migrants could be a violation of Federal laws or DoD policies, specifically the Posse Comitatus Act and DoDI 3025.18.

as well as Spanish language phrase cards to help the DoD title 10 personnel communicate with people who may not speak English. Figure 5 depicts the Spanish language phrase card.

MSC Spanish Phrases – Read the phrases in red in normal English and put emphasis on the bold letters

General	
I do not speak Spanish	No hablo español
Please	Por favor
We are American Military	Somos del Ejército Americano
We are not Border Patrol Agents	No somos de la Migra
The Border Patrol will be here soon	Ya viene la Migra
The Border Patrol speaks Spanish	La Migra habla español
Calm down	Calmado
Put your weapon down!	Baja tu Arma
Show me your hands!	Quiero ver tus manos
Back away!	Atrás
Migrants	Migrantes
I have water/ I do not have water	Tengo agua / No tengo agua
I have food/ I do not have food	Tengo comida / no tengo comida
Do you need a Doctor?	¿Necesita un Doctor?
I am not medically trained	Yo no soy Doctor
Do you have weapons?	¿Tienes armas?
Put weapons there	Armas aquí
If you want, you may wait here	Si quieres, espera aquí
You are in United States territory	Estan en los Estados Unidos

████████████████████

██

████████████████████████████████

(CUI) Figure 5. ARNORTH Spanish Language Phrase Card
Source. 3rd Brigade Combat Team.

(~~CUI~~) Finally, on March 7, 2020, in response to a CBP request for assistance, the CRF activated and deployed approximately 80 DoD title 10 personnel to San Ysidro, and approximately 80 DoD title 10 personnel to El Paso to provide force protection support to CBP personnel and property at the ports of entry.⁶⁶ We observed that immediately upon the arrival of the CRF to the San Ysidro port of entry, the CRF began to conduct training exercises with CBP. [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] During the various scenarios, the CRF and CBP demonstrated a process to minimize the DoD title 10 personnel role in the temporary detention of civilians or migrants. [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

DHS Personnel Told Us That DoD Title 10 Personnel Helped DHS to Secure the U.S. Southern Border

As a result, DHS personnel told us that DoD title 10 personnel helped the DHS carry out its mission to secure the southern border in California, Arizona, New Mexico, and Texas. For example, the Alliance to Combat Transnational Threat Director described an occasion when a large caravan of migrants was travelling toward the El Paso sector. The caravan of migrants altered their direction after they learned of the presence of DoD title 10 personnel. Additionally, USBP personnel told us that for every MSC site operated by DoD title 10 personnel, an agent was able to return to law enforcement duties along the U.S. southern border. Finally, USBP personnel told us that, in 2019, the DoD title 10 personnel supporting DHS southern border security operations reported the presence of civilians or migrants near the border that resulted in the USBP apprehending 1,805 individuals.

⁶⁶ (~~CUI~~) DoD title 10 personnel deployed from the Army 519th Military Police Battalion and the Army 687th Engineer Construction Company, Fort Polk, Louisiana, were tasked for the deployment to provide force protection to the federal mission [REDACTED] [REDACTED] was in advance of the March 11, 2020, Supreme Court order granting preliminary injunction of the U.S. Court of Appeals for the Ninth Circuit’s decision in April 2019, setting aside the Migrant Protection Protocols. Wolf, Sec. Of Homeland, et al. V. Innovation Law Lab, et al., U.S. Supreme Court, March 11, 2020.

⁶⁷ (~~CUI~~) The persons acting as civilians or migrants in the training exercises were CBP and CRF personnel. [REDACTED] [REDACTED]

Finding C

The DoD Provided Adequate Training on the Standing Rules for the Use of Force to DoD Title 10 Personnel Providing Support to DHS Southern Border Security Operations

The DoD provided adequate Standing Rules for the Use of Force (SRUF) training to DoD title 10 personnel supporting DHS southern border security operations related to the potential contact between civilians or migrants. Specifically:

- the training curriculum for the SRUF included title 10 authorities allowed by Federal laws and DoD policies;
- 50 of 54 (93 percent) of the DoD title 10 personnel in our sample were provided adequate SRUF training and could generally describe the SRUF to us; and
- some unit commanders and noncommissioned officers provided additional informal SRUF training to DoD title 10 personnel.⁶⁸

As a result, the DoD SRUF training contributed to DoD title 10 personnel limiting contact with civilians or migrants in all 183 (100 percent) encounters reported between October 24, 2018, and December 16, 2019.

The DoD Provided Adequate Training on the Standing Rules for the Use of Force to DoD Title 10 Personnel

The DoD provided adequate SRUF training to DoD title 10 personnel supporting DHS southern border security operations related to the potential contact between civilians or migrants. Specifically, we determined that the training curriculum provided to DoD title 10 personnel before they performed their assigned duties to support DHS southern border security operations included title 10 authorities allowed by Federal laws and DoD policies. Additionally, DoD title 10 personnel supporting DHS southern border security operations were generally provided SRUF training. Finally, some unit commanders and noncommissioned officers provided additional informal SRUF training to DoD title 10 personnel supporting DHS southern border security operations.

⁶⁸ Although we determined that 50 of 54 of the DoD title 10 personnel in our sample were provided SRUF training, we determined that, as previously stated, only 48 of 54 of the DoD title 10 personnel carried the SRUF quick reference cards. The four DoD title 10 personnel in our sample that were not provided the SRUF training performed duties on a military installation, where there was limited risk of contact with civilians or migrants.

The SRUF Training Curriculum Included Title 10 Authorities Allowed by Federal Laws and DoD Policies

The SRUF training curriculum included Federal laws and DoD policies applicable to DoD title 10 personnel. Specifically, DoDD 5210.56, CJCSI 3121.01B, and the SRUF define the circumstances under which DoD title 10 personnel are allowed the use of force.⁶⁹ For example, DoDD 5210.56 allows DoD title 10 personnel to use non-lethal and deadly force as a means of self-defense or defense of others, but must use the least amount of force necessary to control the situation, accomplish the mission, and protect personnel. Collectively, the Federal laws and DoD policies establish standards that DoD title 10 personnel must abide by when they encounter civilians or migrants while supporting DHS southern border security operations.

To determine whether the SRUF training curriculum was consistent with Federal laws and DoD policies, we compared the SRUF training curriculum to the applicable Federal laws and DoD policies. We found that the SRUF training curriculum was consistent with the Federal laws and DoD policies discussed in the Background section of this report.

Specifically, the training curriculum incorporated the prohibitions of the Posse Comitatus Act, DoDD 3025.18, and DoDI 3025.21 against the use of DoD title 10 personnel to perform law enforcement duties that affect civilians or migrants. For example, the training curriculum explains to DoD title 10 personnel that:

[DoD title 10 personnel] are supporting DHS to accomplish their mission. Our focus is on supporting and enabling DHS and CBP. We are NOT there to perform their mission for them, but rather to provide support that allows them not to be distracted by other complications. Therefore, we will not be conducting law enforcement activities. The Posse Comitatus Act (to be discussed later) prohibits us from performing those functions.

(CUI) The training curriculum also incorporated the provisions of DoDD 5210.56 and CJCSI 3121.01B. For example, the training curriculum emphasized that DoD title 10 personnel may not use unreasonable force to control civilians or migrants and must use de-escalation tactics during encounters with civilians or migrants when time and circumstances permit, and, [REDACTED]

⁶⁹ DoDD 5210.56, "Arming and the Use of Force," November 18, 2016, CJCSI 3121.01B; "Standing Rules of Engagement / Standing Rules for the Use of U.S. Forces," June 13, 2005; and ARNORTH Standing Rules for the Use of Force.

⁷⁰ (CUI) [REDACTED]

(~~CUI~~) Finally, the training curriculum includes vignettes used by trainers to perform “fact pattern” training with DoD title 10 personnel to reinforce the trainee’s understanding of the SRUF.⁷¹ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

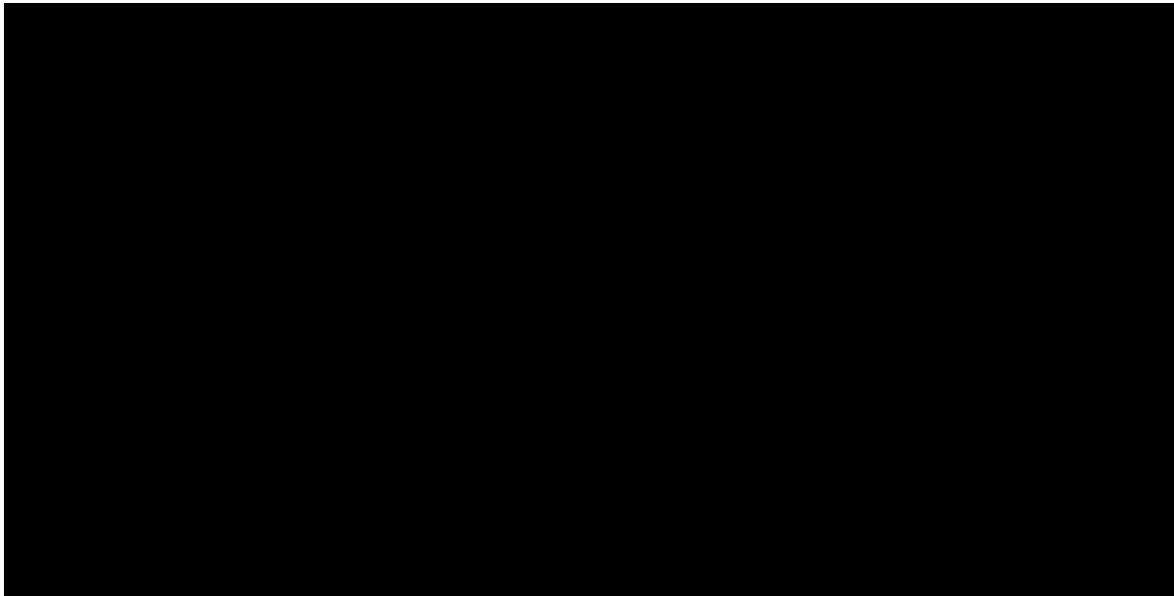
The SRUF training curriculum has evolved over time. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Figure 6 depicts an example of a vignette included the SRUF curriculum.



⁷¹ (~~CUI~~) According to the SRUF training curriculum, a vignette is a literary description of a real-world scene or incident containing the action and reaction of opposing forces. Fact-pattern training applies the SRUF to patterns of behavior within a vignette of an opposing force. For example, a vignette might depict [REDACTED]

[REDACTED] The trainers that provided SRUF training varied based upon the time when the unit deployed and whether an individual being trained was deployed at a separate time than the rest of the unit. For example, in 2018, [REDACTED] provided SRUF training to service members before their unit’s deployment. However, in 2019, [REDACTED] provided SRUF training to service members before their unit’s deployment, and the leadership of deployed units were required to train service members who arrived to the deployed locations after the unit deployed and before the service member performing duties to support DHS southern border security operations.

⁷² According to ARNORTH, Task Force 51 is a “scalable, deployable command post that provides mission command options for routine and contingency operations in the Northern Command area of responsibility.” Task Force 51 formed and directed mobile training teams to instruct units deploying to support DHS southern border security operations on the SRUF and other mission essential requirements.

DoD title 10 personnel who received SRUF training told us that the fact-pattern training that included vignettes was more effective than training taught by only lecture. During February and March 2020, we interviewed 50 DoD title 10 personnel that received the SRUF training. The DoD title 10 personnel generally told us that the fact pattern training that included vignettes helped them to understand the SRUF. For example, one soldier told us that the training clarified questions that he had about the SRUF because the fact-patterns used by the trainers helped him better understand the SRUF. Finally, a Marine Corps commander told us that the training was effective due to the use of fact-patterns and that, based on the way the Marines in his unit were responding to migrant encounters, he believed that the training was sufficient.

DoD Title 10 Personnel Supporting DHS Southern Border Security Operations Were Provided SRUF Training

We determined that 50 of 54 (93 percent) DoD title 10 personnel in our sample were provided SRUF training. Although 4 of 54 (7 percent) DoD title 10 personnel in our sample were not provided the SRUF training, these soldiers told us that their deployed duties are performed on military installations near the U.S. southern border where there is limited risk of contact with civilians or migrants during border crossings. DoD training guidance states that all DoD title 10 personnel must perform SRUF training before deploying to or performing duties to support DHS southern border security operations. CJCSI 3121.01B requires that all commanders “teach and train their personnel how and when to use both non-lethal and deadly force in self-defense.” Additionally, USNORTHCOM training guidance states that unit commanders are required to certify in writing that all DoD title 10 personnel deploying to or performing duties to support DHS southern border security operation were provided the SRUF training.

We reviewed the unit training rosters that the unit commanders submitted for the 54 DoD title personnel that we sampled. We found that 34 of 54 (63 percent) DoD title 10 personnel signed or initialed a unit training roster indicating that the individual was provided SRUF training before deploying to or performing duties to support DHS southern border security operations. We could not verify the participation of 20 DoD title 10 personnel using the unit training rosters because their signature or initials were missing or illegible. During our interviews of these 20 DoD title 10 personnel, we asked them whether they received training before deploying to or performing duties to support DHS southern border security operations. Sixteen of the 20 DoD title 10 personnel told us that they were provided the SRUF training before deploying to or performing duties to support DHS southern border security operations and could generally describe the SRUF to us. The remaining four DoD title 10 personnel in our sample were not provided

the SRUF training, as required by DoD policy, and they told us that their duties are performed on military installations where there is a limited risk of contact with civilians or migrants.

We determined that 50 of 54 (93 percent) DoD title 10 personnel in our sample were provided SRUF training and could generally describe the SRUF to us. In addition, the documentation to support that the training was provided was not complete. Maintaining complete training records would provide evidence that units complied with training requirements and help to ensure that all DoD title 10 personnel receive training before deployment to assist DHS.

Some Unit Commanders and Noncommissioned Officers Provided Additional Informal SRUF Training to DoD Title 10 Personnel Supporting DHS Southern Border Security Operations

Some unit commanders and noncommissioned officers provided additional SRUF training to DoD title 10 personnel supporting DHS southern border security operations. The DoD training guidance states that “commanders will ensure deployed forces receive...training on [the SRUF], as necessary, upon arrival and throughout the length of the deployment...”⁷³ Specifically, we found that some unit commanders and noncommissioned officers consistently tested the knowledge and understanding of applicable Federal laws and DoD policies of DoD title 10 personnel regarding the SRUF.

For example, DoD title 10 personnel that we interviewed during February and March 2020 who were performing MSC duties told us that their leadership regularly questioned them about the SRUF.⁷⁴ One soldier told us that his squad leader and other members of leadership would train him and the other soldiers on the SRUF and quiz them. Two Army commanders and several senior noncommissioned officers told us that they regularly quiz the soldiers under their command on the SRUF whenever possible. Lastly, a marine told us that he and his fellow marines conduct SRUF training before every shift to perform MSC duties and that the training reinforced what he had learned during the SRUF training that he received before his deployment to support DHS southern border security operations.

⁷³ ARNORTH Operation Order-19-010 for DoD Support to CBP Operation GUARDIAN SUPPORT, July 26, 2019.

⁷⁴ We sampled DoD title 10 personnel who operated MSC equipment supporting DHS southern border security operations, which exposes them to a higher risk of contact with civilians or migrants. We also sampled DoD title 10 personnel whose risk of contact with civilians or migrants was negligible because they were performing support duties, such as communications and administration. Additionally, we sampled DoD title 10 personnel assigned to the CRF whose risk of contact with civilians or migrants, when activated, could be the highest among our sampled population.

DoD Title 10 Personnel Responded to Civilian and Migrant Encounters While Providing Support to DHS Southern Border Security Operations in Accordance With Federal Laws and DoD Policies

As a result, the adequate DoD SRUF training contributed to DoD title 10 personnel limiting their contact with civilians or migrants in all 183 (100 percent) encounters reported from October 24, 2018 to December 16, 2019. Specifically, DoD title 10 personnel described duties that they performed and we determined that those duties as described were in accordance with Federal laws and DoD policies.

Specifically, according to details described in the Commander's Critical Information Requirement report, DoD title 10 personnel reported that they responded to the 183 encounters in accordance with the SRUF training that the DoD provided to DoD title 10 personnel. Furthermore, we did not identify any instances when DoD title 10 personnel reported that they performed law enforcement duties of CBP or USBP agents. Instead, we found instances when CBP agents were performing law enforcement duties in the area of DoD title 10 personnel and DoD title 10 personnel reported that they did not participate in the law enforcement duties. For example, on one occasion, DoD title 10 personnel reported that CBP agents were physically deterring migrants from crossing the U.S. southern border near Hidalgo, Texas. Although the DoD title 10 personnel were in the area, the DoD title 10 personnel reported that they did not respond and relied on CBP agents.

Additionally, we did not identify any instances within the Commander's Critical Information Requirement report when DoD title 10 personnel reported that they had unauthorized contact with civilians or migrants. Instead, we identified instances in the Commander's Critical Information Requirement reports where DoD title 10 personnel reported that DoD title 10 personnel provided humanitarian assistance. For example, on one occasion, DoD title 10 personnel reported that they identified an adult female and juvenile female migrant attempting to cross the border near Tucson. According to the Commander's Critical Information Requirement report, the DoD title 10 personnel immediately reported the sighting to the USBP. The migrants continued walking towards the DoD title 10 personnel, so the DoD title 10 personnel redirected the migrants towards a shaded area away from their location. The DoD title 10 personnel noticed the juvenile female migrant was potentially overheating, so the DoD title 10 personnel gave the migrants two bottles of water. The DoD title 10 personnel returned to their vehicle and remained in the vehicle with the doors locked until USBP agents took control of the migrants. These actions were consistent with the duties that the DoD title 10 personnel were allowed to perform, as discussed in the training.

Recommendation, Management Comments, and Our Response

Recommendation C.1

We recommend that the Commander of the U.S. Northern Command:

- a. **Provide training on the Standing Rules for the Use of Force to the four Department of Defense title 10 personnel and any other Department of Defense title 10 personnel that were not provided training on the Standing Rules for the Use of Force before deploying or performing duties to support Department of Homeland Security southern border security operations, as required by Department of Defense policy.**

Commander of the U.S. Northern Command Comments

The Commander of the U.S. Northern Command agreed with the recommendation. Specifically, the Commander stated that SRUF training was provided to the four DoD title 10 personnel identified during the evaluation and that DoD title 10 personnel continue to be provided training on SRUF before they perform duties supporting DHS southern border security operations.

Our Response

Comments from the Commander of the U.S. Northern Command addressed the recommendation; therefore, the recommendation is resolved, but will remain open. We do not require any additional comments from the Commander of the U.S. Northern Command to this report. We will close the recommendation when the U.S. Northern Command provides evidence that the four DoD title 10 personnel that we identified were trained.

- b. **Establish procedures to ensure that commanders document Standing Rules for the Use of Force training for Department of Defense title 10 personnel supporting Department of Homeland Security southern border security operations and a process to verify that all Department of Defense title 10 personnel have received the required training before deploying or performing duties to support Department of Homeland Security southern border security operations.**

Commander of the U.S. Northern Command Comments

The Commander of the U.S. Northern Command agreed with the recommendation and stated that fragmentary orders were published on March 25 and July 10, 2020, reinforcing the requirement that all personnel receive SRUF training and establishing a process and procedures to document and report SRUF training.

Our Response

Comments from the Commander of the U.S. Northern Command addressed the recommendation. Specifically, we reviewed the fragmentary orders that were published on March 25 and July 10, 2020 and confirmed the requirement that all personnel must receive SRUF training. Additionally, we verified that the fragmentary orders require that commanders document the completion of the training and send proof of that training to the U.S. Northern Command. Therefore, this recommendation is closed.

Finding D

DoD Obligated Title 10 Funds to Support DHS Southern Border Security Operations in Accordance With Federal Laws and DoD Policies

Between October 2018 and December 2019, the Army, Air Force, and Marine Corps obligated \$144.3 million of the respective Service's Operations and Maintenance (O&M) funds on a non-reimbursable basis for DoD title 10 support to DHS southern border security operations, in accordance with Federal laws and the DoD Financial Management Regulation (FMR) 7000.14 R.

During FY 2019, Congress provided \$124 million in supplemental O&M funds to the DoD that allowed the Army, Air Force, and Marine Corps to recover Service O&M funds obligated for the DoD to support DHS southern border security operations and related activities. As of June 1, 2020, Congress had not provided supplemental funding for FY 2020. Therefore, for FY 2020, the DoD is using Service O&M funds that were budgeted for other Service operations to provide support to DHS southern border security operations.

As a result, the DoD obligated Service O&M funds and supplemental O&M funds provided by Congress in accordance with Federal law and DoD policies.

The DoD Obligated Title 10 Funds to Support DHS Southern Border Security Operations in Accordance With Federal Laws and DoD Policies

Between October 2018 and December 2019, the Army, Air Force, and Marine Corps obligated \$144.3 million of their respective Service's O&M funds on a non-reimbursable basis for DoD title 10 personnel to support DHS southern border security operations in accordance with title 10, United States Code, chapter 15, and the DoD FMR 7000.14 R.⁷⁵ Title 10, United States Code, chapter 15, and the DoD FMR 7000.14-R include detailed requirements for the DoD to obtain reimbursement and to obligate and track funds used for the support that the

⁷⁵ According to the DoD FMR glossary, reimbursement is amounts earned and collected for property sold or services furnished either to the public or another Federal entity. Title 10 provides the Secretary of the Defense the authority to waive reimbursement and provide assistance to civilian law enforcement agencies on a non-reimbursable basis when certain criteria are met. Additionally, the DoD 7000.14-R, volume 3, chapter 11, "Unmatched Disbursements, Negative Unliquidated Obligations, and In-Transit Disbursements," defines an obligation as amounts of orders placed, contracts awarded, services received, and similar transactions during an accounting period that will require payment during the same or a future period.

DoD provides to other Federal agencies.⁷⁶ Additionally, the DoD FMR 7000.14-R governs financial management by establishing and enforcing the requirements, principles, standards, systems, procedures, and practices necessary to comply with financial management statutory and regulatory requirements applicable to the DoD.

The Army, Air Force, and Marine Corps provided us financial reports for their FY 2019 and FY 2020 obligated funds in support of DHS southern border security operations.⁷⁷ Additionally, Army, Air Force, and Marine Corps financial management personnel explained the procedures performed to obligate funds. The financial management personnel also provided us with written narratives, internal policies, detailed reports, and supporting documentation, such as invoices and quotes, which support the amount and types of obligated funds recorded. We reviewed transactions recorded by the Army, Air Force, and Marine Corps to provide support to the DHS southern border security operations to determine whether the DoD obligated funds in accordance with Federal laws and DoD policies. Specifically, we reviewed the DHS RFA packages and financial reports to determine whether the Secretary of Defense waived reimbursement and the DoD obligated and tracked title 10 funds in accordance with title 10, United States Code, chapter 15, and DoD FMR 7000.14-R

The Secretary of Defense Waived Reimbursement for DHS Southern Border Security Operations in Accordance With Federal Laws and DoD Policies

The Secretary of Defense waived reimbursement for all 11 DHS RFAs that included DoD title 10 support of DHS southern border security operations, in accordance with Federal laws and DoD policies. Title 10, United States Code, chapter 15, provides statutory guidance for DoD support to other Federal agencies. In addition, 10 U.S.C. § 277 (2018) identifies requirements for reimbursement and for waiving reimbursement to the DoD for support provided to other Federal agencies.

Furthermore, according to DoD FMR volume 11A, chapter 19; DoDD 3025.18; and Joint Publication 3-28, the DoD is not specifically funded for DSCA operations. Therefore, DSCA activities are generally provided on a cost-reimbursable basis, unless otherwise directed by the President in certain circumstances, or if waived by the Secretary of Defense or an appropriate DoD official.⁷⁸

⁷⁶ FMR, volume 11A, chapter 19, "Defense Support to Civil Authorities," Sections 1907 and 1908.

⁷⁷ The financial reports that we obtained identified obligations for the 10th Mountain Division, 101st Airborne Division, Air Force Installation Management and Support Center, Air Force Centralized Asset Management, and Marine Corps.

⁷⁸ As an example of another appropriate DoD official, the DoDD 3025.18 states that the Assistant Secretary of Defense for Homeland Defense and Global Security (ASD[HD&GS]) may also serve as an approval authority for waiver of the requirement to reimburse the DoD in certain circumstances.

On April 4, 2018, the President signed Presidential Memorandum “Securing the Southern Land Border of the United States,” which directed the Secretary of Defense to use all available authorities to provide support for DHS southern border security operations. On November 20, 2018, the President issued another memorandum documenting his decision to deploy DoD title 10 personnel in support of DHS southern border security operations. This was followed by a third memorandum on February 15, 2019, in which the President declared a national emergency along the U.S. southern border and reiterated the President’s mandate that the Secretary of Defense assist and support DHS southern border security operations.

In response to the Presidential mandates in these three memorandums, the DHS submitted DHS RFAs to the Secretary of Defense. The Secretary of Defense approved 31 DHS RFAs between April 2018 and December 2019 to provide military support of DHS southern border security operations. Of these 31 DHS RFAs, 11 DHS RFAs authorized the use of DoD title 10 personnel. The Secretary of Defense approved all 11 DHS RFAs associated with the use of DoD title 10 personnel on a non-reimbursable basis, as authorized by 10 U.S.C. § 277 and DoD policy.

The 11 DHS RFA packages also contained RFA Approval Notification Memorandums notifying the DHS of the approval of the individual RFAs on a non-reimbursable basis. The Approval Notification Memorandums, issued by the Executive Secretary of the Office of the Secretary of Defense, documented the Secretary of Defense’s review and approval of the DHS request. These Approval Notification Memorandums stated that support to the DHS would be provided on a non-reimbursable basis to the greatest extent possible and that the DoD’s overall contribution would remain within any funding and personnel constraints directed by the Secretary of Defense.

DoD Obligated and Tracked Title 10 Funds for DHS Support of Southern Border Security Operations in Accordance With the DoD FMR and Other DoD Policies

The Army, Air Force, and Marine Corps obligated and tracked the use of O&M funds to support for DHS southern border security operations in accordance with the DoD FMR and other DoD policy. Specifically, according to DoD FMR volume 11A, chapter 19, the Joint Staff identifies resources available for support in response to DSCA requests and issues execute orders to the appropriate Commanders of Combatant Commands with DSCA responsibilities to implement approved actions to provide required support.

We found that the Joint Staff identified DoD title 10 personnel in the Army, Air Force, and Navy that were available for support in response to DSCA and issued execute orders to the Commander of USNORTHCOM. We obtained the execute orders issued from October 26, 2018, through December 31, 2019, for DoD title 10 personnel to support DHS southern border security operations. According to the execute orders, the Army, Air Force, and Marine Corps were responsible for funding the costs associated with activities performed by their respective personnel to provide support for DHS southern border security operations.⁷⁹

DHS southern border security operations were not an FY 2019 or FY 2020 budgeted program for the DoD. The Services used O&M funds that were budgeted for other continuing operations, in accordance with the execute orders.⁸⁰ However, through the enactment of Public Law 116-26 on July 1, 2019, Congress provided \$124 million in supplemental O&M funding for FY 2019 to the Army (\$93 million), Air Force (\$13 million), and Marine Corps (\$18 million).⁸¹ This supplemental funding allowed the Army, Air Force, and Marine Corps to restore O&M funds that had been obligated in FY 2019, and in some cases spent, to support and continue to support DHS southern border security operations through the remainder of FY 2019.

Congress provided the \$124 million in supplemental funds in FY 2019. Army, Air Force, and Marine Corps financial management personnel told us that O&M funds were obligated in FY 2019 to support DHS southern border security operations. This allowed the DoD to use the recovered funds for the continuing operations and other mission requirements programmed for FY 2019. Army financial management personnel, who obligated the majority of the Service O&M funds to support DHS southern border security operations, told us that the obligation of the O&M funds in FY 2019 to provide support of DHS southern border security operations did not significantly impact the Army's other traditional missions because the Army recovered the O&M funds during the same fiscal year, FY 2019.

As of June 1, 2020, Congress had not approved supplemental funding for FY 2020 that would permit the DoD to recover the O&M funds that were obligated to provide support to DHS southern border security operations. Therefore, for FY 2020, the DoD is using Service O&M funds that were budgeted for other Service

⁷⁹ The costs associated providing support for DHS southern border security operations include deployment, operating, and redeployment costs, among other costs.

⁸⁰ The DoD has a Drug Interdiction and Counter-Drug Activities, Defense account, that is used under 10 U.S.C. § 284 to provide support for the counter-drug activities of another department of the Federal government if that support is requested by the official who has responsibility for the counter-drug activities.

⁸¹ Public Law 116-26 (1 July 2019). P.L. 116-26 "Emergency Supplemental Appropriations for Humanitarian Assistance and Security at the Southern Border Act, 2019."

operations to provide support to DHS southern border security operations, in accordance with the execute orders. Table 2 depicts the breakdown of FY 2019 and FY 2020 obligations by organization and fiscal year.

Table 2. Breakdown of FY 2019 and FY 2020 Obligations to Support DHS Southern Border Security Operations by Service and Fiscal Year

DoD Organization	FY 2019 Amount Obligated (thousands)	FY 2020 Amount Obligated (as of December 31, 2019) (thousands)	Total (thousands)
Army	\$78,431	\$32,979	\$111,410
Air Force	13,485	54	13,540
Marine Corps	13,604	5,744	19,348
Total	\$105,520	\$38,777	\$ 44,298

Source: DoD OIG.

According to DoD FMR 7000.14-R, O&M funds are used for expenses, such as salaries, travel and transportation, minor construction projects, operating military forces, training and education, supplies, equipment, depot maintenance, and base operations support.⁸² We evaluated the financial reports that included the breakdown for the total amounts reported by each Service and other details, such as (1) date of the obligation, (2) description of the expense, (3) amount obligated, and (4) amount paid, to determine whether the DoD obligated funds in accordance with the DoD FMR. We found that the Army, Air Force, and Marine Corps obligated O&M funds for travel, transportation, property transportation, contracted services, rent, and supplies, materials, and maintenance in accordance with the DoD FMR. Table 3 depicts the obligations made by the DoD organizations under similar expense categories.

Table 3. Breakdown of Obligations to Support DHS Southern Border Security Operations in FY 2019 and FY 2020 by Service and Expense Category

Obligation Category	Army (thousands)	Air Force (thousands)	Marine Corps (thousands)	Total (thousands)
Travel	\$ 73,254	\$ 1,266	\$ 14,996	\$ 89,516
Transportation	16,831	482	-	17,313
Property Transportation	-	215	202	417
Contracted Services	5,971	1,015	1118	8,104
Rent	72	6,419	634	7,125

⁸² FMR volume 2A, chapter 1, section 0102, "Funding Policies."

Table 3. Breakdown of Obligations to Support DHS Southern Border Security Operations in FY 2019 and FY 2020 by Service and Expense Category

Obligation Category	Army (thousands)	Air Force (thousands)	Marine Corps (thousands)	Total (thousands)
Supplies, Materials & Maintenance	15,282	4,143	2,398	21,823
Total	\$111,410	\$13,540	\$19,348	\$144,298

Source: DoD OIG.

Finally, according to Joint Publication 3-28, the Army, Air Force, and Marine Corps should track costs related to providing support (in this case, to DHS southern border security operations) by using standard financial codes. We determined that the Army, Air Force, and Marine Corps tracked expenses and amounts obligated by Budget Activity and Sub-Activity Groups using functional accounting codes.⁸³ The use of these functional accounting codes provided visibility of expenses incurred by the organizations as they recorded the transactions codes in their respective financial systems.

The DoD Obligated Service O&M Funds and Supplemental O&M Funds Provided by Congress in Accordance With Federal Law and DoD Policy

As a result, the DoD obligated Service O&M funds and supplemental O&M funds provided by Congress in accordance with Federal law and DoD policies.

⁸³ A Budget Activity is a category within each appropriation and fund account that identify the purposes, projects, or types of activities financed by the appropriation or fund, for example, Research, Development, Test, and Evaluation (RDT&E) Budget Activities (BAs). The Army refers to this code as “Functional Cost Accounting (FCA) Code,” the Air Force uses the term “Special Program Code (ESP),” and the Marine Corps refers to it as “special interest code.”

Appendix A

Scope and Methodology

We conducted this evaluation from December 2019 through May 2020, in accordance with the “Quality Standards for Inspection and Evaluation,” published in January 2012 by the Council of Inspectors General on Integrity and Efficiency. Those standards require that we adequately plan the evaluation to ensure that we meet the objectives and that we perform the evaluation to obtain sufficient, competent, and relevant evidence to support the findings, conclusions, and recommendations. We believe that the evidence obtained was sufficient, competent, and relevant to lead a reasonable person to sustain the findings, conclusions, and recommendation.

To accomplish our objectives, we reviewed Federal laws and DoD policies to identify the title 10 authorities and limitations when operating within the United States. We evaluated DoD policies at the strategic, operational, and tactical levels.

Strategic-level guidance included the Secretary of Defense-approved response to the DHS RFAs, execute orders, and other policies and direction issued by the Office of the Secretary of Defense, the Office of the Chairman of the Joint Chiefs of Staff, and the Joint Staff. We evaluated the DHS RFAs and execute orders that we received from OUSD(P) to determine whether the DHS RFAs and execute orders were issued in accordance with Federal laws and DoD policies.

Operational-level guidance included operation orders, fragmentary orders, and standard operating procedures issued by USNORTHCOM and ARNORTH in support of the deployment of DoD title 10 personnel to support DHS southern border security operations. We evaluated operation orders, fragmentary orders, and standard operating procedures that USNORTHCOM provided to determine whether the operational guidance, which links strategic-level guidance with tactical employment of forces, included the same requirements and limitations as the DHS RFAs.⁸⁴

We evaluated tactical-level guidance, which included standard operating procedures, unit instructions, and policies developed at the brigade, battalion, and company levels that defined and directed the duties performed by DoD title 10 personnel that supported DHS southern border security operations.

⁸⁴ This evaluation relied on the completeness of USNORTHCOM’s response to our request for all applicable operation orders, fragmentary orders, and standard operating procedures. We were unable to verify that USNORTHCOM provided all documents requested.

We evaluated the tactical-level guidance to determine whether it included the same authorities allowed and limited by Federal laws, DoD policies, and strategic and operational-level guidance.

Additionally, to determine whether the DoD's support to DHS personnel complied with applicable Federal laws and DoD policies, we selected a nonstatistical sample of three of nine sectors where DoD title 10 personnel were deployed to support DHS southern border security operations as of January 15, 2020. We selected the three sectors based on the risk that DoD title 10 personnel could come into direct contact with civilians or migrants. We performed site visits to the San Diego; Tucson, and the El Paso border sectors to observe DoD title 10 personnel execute their mission to support DHS southern border security operations. Specifically, we observed DoD title 10 personnel that operated MSCs at two sites at each location, including austere and urban environments, in the El Paso and Tucson border sectors and one MSC site and one RVSS site in the San Diego sector. Additionally, we observed a CRF unit train with CBP personnel in the San Diego sector. We also observed two training safety officers that monitor DHS firearm ranges in the El Paso sector. Furthermore, we selected a nonstatistical sample of seven units assigned in the border sectors that we visited during February and March 2020 and a unit from the CRF based on the unit size and mission. We interviewed at least six DoD title 10 personnel assigned at different levels at the selected locations to determine:

- instances of noncompliance with Federal laws and DoD policies;
- personnel that could not describe the SRUF;
- tasks that were performed while deployed that were not identified in a DHS RFA;
- instances of DoD title 10 personnel's interaction with or detainment of civilians or migrants.

Furthermore, to identify any potential violations of Federal laws or DoD policies by the DoD title 10 personnel, during February and March 2020 we visited the sector CBP Headquarters, select CBP border stations, select ports of entry, and three non-governmental organizations at the three selected sectors.

We interviewed:

- CBP personnel, including the Alliance to Combat Transnational Threats Director, in El Paso and Supervisory Special Agents at all locations;
- Office of Field Operations personnel, including Supervisory Special Agents at all of the selected sectors;
- personnel from three non-governmental organizations at all of the selected sectors, and

- title 32 personnel, including commanders, supervisors, and enlisted personnel, assigned to each of the selected sectors.

We also reviewed the Commander's Critical Information Requirement reports from October 24, 2018, through December 16, 2019, that USNORTHCOM sent us. Additionally, we requested DHS, DoD, and Service-level Offices of Inspector General provide hotline complaints related to DoD title 10 personnel supporting DHS southern border security operations to identify instances when DoD title 10 personnel did not comply with Federal laws and DoD policies. The DHS, DoD, and Service-level Offices of Inspector General did not identify any hotline complaints directly related to the objectives of this evaluation.

To determine whether DoD title 10 personnel were provided adequate training that included the SRUF and potential contact with civilians or migrants, we obtained the training curriculum developed by the ARNORTH and compared the curriculum to the DoD title 10 authorities allowed or limited by Federal laws and DoD policies. Additionally, we compared a nonstatistical sample of DoD title 10 personnel supporting DHS southern border security operations to unit training rosters and we selected and interviewed the nonstatistical sample of DoD title 10 personnel to verify whether training was provided. Furthermore, we interviewed ARNORTH training personnel to determine the frequency and delivery method for the training.

To determine the source and amount of funds obligated in support of DoD title 10 personnel supporting DHS southern border security operations, we identified the Federal laws and DoD policies and regulations that govern the type of funds used, including supplemental funds provided by Congress to support the DoD's support of DHS southern border security operations. We also identified the amount and type of funding that the Army, Air Force, and Marine Corps obligated to support DoD title 10 personnel deployed to support DHS southern border security operations. Additionally, we obtained transaction data from October 1, 2018, through December 31, 2019, such as transaction reports and supporting documentation, to identify the funds obligated to the DoD's support of DHS southern border security operations. Based on the type of funds and rules for its use, we identified transactions that represented a risk of noncompliance with identified criteria and conducted further inquiries. Specifically, we reviewed these transactions and obtained supporting documentation to determine compliance with the identified Federal laws and DoD policies. We coordinated with personnel from USD(C)/CFO and the Army, Air Force, and Marine Corps Comptroller and Budget offices to identify the processes used to distribute funds within the DoD and the controls used to ensure funds were obligated in accordance with Federal laws and DoD policies.

Use of Computer-Processed Data

We used computer-processed data to perform this evaluation. Specifically, personnel from Army, Air Force, and Marine Corps provided spreadsheets that included financial transaction reports from the following DoD financial management systems:

- General Fund Enterprise Business Systems
- Defense Enterprise Accounting and Management System
- Standard Accounting Budgeting and Reporting System

We used the data provided from these financial systems to perform analysis and reconciliations of the amounts obligated towards DoD support of DHS southern border security operations. While we did not validate the reliability of the systems themselves, we obtained supporting documentation for the transactions we evaluated and traced the amounts recorded to the support. Based on the reconciliations performed as part of this project, we determined that the data obtained was sufficiently reliable to support our findings and conclusions.

Prior Coverage

No prior coverage has been published on the use of DoD title 10 personnel supporting DHS southern border security operations during the last 5 years. However, on March 22, 2019, the Government Accountability Office (GAO) initiated an audit at the request of several ranking members of Congress. As part of this audit, the GAO is assessing DoD and DHS planning for border operations, the costs of military deployments to the U.S. southern border, and the readiness impacts of these deployments, among other things. As of August 7, 2020, the GAO had not issued a report related to this audit.

Appendix B

Chronology

~~(CUI)~~ Table 4. Chronology of Significant Events Related to the DoD's Support of DHS Southern Border Security Operations (Excluding the DHS RFA Details in Table 1)

(CUI) Date	Events
April 4, 2018	President Trump directs the Secretary of Defense to support the Department of Homeland Security in securing the U.S. southern border by using National Guard personnel and any other authorities appropriate and consistent with the law. He also directs the Secretary of Homeland Security to work with the Secretary of Defense to provide any training or instruction necessary for military personnel, including National Guard units, to support Department of Homeland Security southern border security operations effectively. Operation GUARDIAN SUPPORT begins.
October 24, 2018	The President directs the DoD to support Customs and Border Protection in support of operations related to the Honduran Migrant Caravan.
October 25, 2018	U.S. Northern Command directs U.S. Army North to serve as the lead functional component commander for DoD title 10 support to Customs and Border Protection's southern border security operations.
October 26, 2018	The Secretary of Defense approves DHS RFA 7 that authorizes the use of DoD title 10 personnel to execute missions in support of Customs and Border Protection (reference Table 1).
October 27-28, 2018	The Task Force 51 Joint Reception, Staging, Onward Movement, and Integration teams deploy to Marine Corps Base Camp Pendleton, California; Davis-Monthan Air Force Base, Arizona; and Kingsville, Texas.
October 27, 2018	Operation GUARDIAN SUPPORT ends. Operation FAITHFUL PATRIOT begins.
October 31, 2018	The Army 16th Military Police Brigade establishes command and control of Customs and Border Protection support for Arizona and the Army 89th Military Police Brigade establishes command and control of Customs and Border Protection support for South Texas.
November 6, 2018	Operation FAITHFUL PATRIOT ends. Operation BORDER SUPPORT begins.
November 16, 2018	The Secretary of Defense approves and signs DHS RFA 9 (reference Table 1).
November 18, 2018	The Secretary of Defense approves and signs DHS RFA 11 (reference Table 1).
November 25, 2018	Migrants protest at the San Ysidro Land Port of Entry, San Ysidro, California, but do not penetrate the Customs and Border Protection's security controls.
December 4, 2018	The Secretary of Defense approves and signs DHS RFA 12 (reference Table 1).
December 19, 2018	The Army 89th Military Police Brigade returns to Fort Hood, Texas, after completing operations in South Texas.
January 11, 2019	The Secretary of Defense approves and signs DHS RFA 13 (reference Table 1).
February 1, 2019	The Secretary of Defense approves and signs DHS RFA 15 (reference Table 1).

~~(CUI)~~ Table 4. Chronology of Significant Events Related to the DoD's Support of DHS Southern Border Security Operations (Excluding the DHS RFA Details in Table 1) (cont'd)

(CUI) Date	Events
February 6, 2019	The Army 503rd Military Police Battalion establishes command and control of Customs and Border Protection support to the Del Rio, Texas Sector.
February 15, 2019	The Secretary of Defense approves and signs DHS RFA 16 (reference Table 1).
February 15, 2019	President Trump issues the declaration of emergency.
February 21, 2019	Joint Task Force-North assumes command and control of the Mobile Surveillance Capabilities mission.
March 8, 2019	The Army 93rd Military Police Battalion assumes command and control of the Crisis Response Force, Fort Bliss, Texas.
March 18, 2019	The Secretary of Defense approves and signs DHS RFA 19 (reference Table 1).
March 23, 2019	The Army 36th Engineer Brigade completes its concertina wire installation mission.
March 29, 2019	(CUI) [REDACTED]
April 3, 2019	The Army 36th Engineer Brigade Headquarters transitions command and control responsibilities for DHS RFA 7 for Point of Entry Hardening operations to the Army 5th Engineer Battalion Headquarters (Task Force Fighter) and the Army 46th Engineer Battalion Headquarters (Task Force Steel Spike).
April 19, 2019	The Secretary of Defense approves and signs DHS RFA 22 (reference Table 1).
May 15, 2019	The Marine Wing Support Squadron 374 assumes Mobile Surveillance Capabilities operations from the Marine Corps 1st Light Armored Reconnaissance Battalion in the San Diego and El Centro, and the Yuma, Arizona, border sectors.
May 17, 2019	The Secretary of Defense approves and signs DHS RFA 23 (reference Table 1).
May 23, 2019	(CUI) [REDACTED]
May 31, 2019	The Army 1st Air Cavalry Brigade assumes the aviation mission in direct support of the Joint Force Land Component Command, relieving the Army 3rd Infantry Division Combat Aviation Brigade.
May 31, 2019	The Army 1st Cavalry Division Sustainment Brigade assumes mission control from the Army 4th Infantry Division Sustainment Brigade as the Joint Force Land Component Command sustainment Headquarters for the Customs and Border Protection southern border security operations.
June 6, 2019	Marine Wing Support Group 37 (Task Force Rhino) from the Marine Corps Air Station Miramar, California, assumes command and control from the Marine Corps 1st Light Armored Reconnaissance Battalion for the Mobile Surveillance Capabilities operations in the San Diego sector.

~~(CUI)~~ Table 4. Chronology of Significant Events Related to the DoD's Support of DHS Southern Border Security Operations (Excluding the DHS RFA Details in Table 1) (cont'd)

(CUI) Date	Events
June 7, 2019	The Joint Force Land Component Command completes site survey reports for Del Rio; Laredo; and Tucson, the three sites deemed feasible by the DHS RFA 9.
June 8, 2019	The Army 15th Engineer Company commences painting operations.
June 18, 2019	The Army 10th Mountain Division (317th Engineer Battalion and 3rd Cavalry Regiment) replaces the Army 2nd Infantry Division's 1st Stryker Brigade Combat Team at the Mobile Surveillance Capabilities sites.
June 24, 2019	(CUI) [REDACTED]
July 3, 2019	(CUI) [REDACTED]
July 8, 2019	The Marine Corps Combat Logistics Regiment 17 from Marine Corps Base Camp Pendleton, reaches full operational capability in the Yuma and Tucson, border sectors.
July 9, 2019	The Army 2nd Battalion, 4th Infantry Regiment, Fort Polk, Louisiana, achieves full operational capability in the El Paso and Rio Grande Valley, Texas, border sectors.
July 12, 2019	The Commander of U.S. Northern Command approves a new command and control structure with a brigade headquarters that aligns subordinate battalions with Customs and Border Protection sector counterparts. This change provides command and control for all mission sets within a specific geographic location. This new structure increases the number of supervisors deployed with DoD title 10 personnel, increases unity of command effort, and maximizes the brigade headquarters' efficiency.
July 15, 2019	The Joint Force Land Component Command acknowledges receipt of the Department of Homeland Security memorandum dated July 12, 2019, which rescinds the request for DoD Short-Term Holding Facility Support to Customs and Border Protection.
July 31, 2019	(CUI) [REDACTED]
August 15, 2019	The 1st Battalion, 4th Marines, from Marine Corps Base Camp Pendleton, assumes the Mobile Surveillance Capabilities mission from the Marine Wing Support Group 37, Marine Corps Air Station, Miramar, in the San Diego and El Centro sectors.
August 18, 2019	Joint Task Force-North executes a Transfer of Authority for Mobile Surveillance Capabilities Central and East sectors to the Army 10th Mountain Division. The 10th Mountain Division assumes command and control of the Yuma and Tucson, Arizona, sectors and the El Paso, Big Bend, Del Rio, Laredo, and Rio Grande Valley, sectors.

~~(CUI)~~ Table 4. Chronology of Significant Events Related to the DoD's Support of DHS Southern Border Security Operations (Excluding the DHS RFA Details in Table 1) (cont'd)

(CUI) Date	Events
September 1, 2019	The Army 10th Mountain Division assumes Tactical Control of all Marine Corps forces in Task Force West, completing the geographical Joint Operations Area command and control realignment.
September 3, 2019	The Secretary of Defense approves and signs DHS RFA 27 (reference Table 1).
September 14, 2019	The U.S. Northern Command submits 45-day extensions (extension from September 30, 2019, to November 15, 2019) to Joint Staff for 40 southern border security operations requirements.
September 21, 2019	The U.S. Army North submits the 2020 DHS RFA requirements to the U.S. Northern Command.
September 23, 2019	The Secretary of Defense approves a 45-day extension for all active forces supporting the Department of Homeland Security southern border security operations.
October 1, 2019	The Southwest Border 2020 Secretary of Defense Action Memorandum becomes active. Multiple positions from previous DHS RFAs will no longer be filled; however, the Mobile Surveillance Capabilities mission will continue. (CUI)

Management Comments

Commander, U.S. Northern Command

UNCLASSIFIED



UNITED STATES NORTHERN COMMAND

JUL 28 2020

MEMORANDUM FOR INSPECTOR GENERAL, DEPARTMENT OF DEFENSE

FROM: Commander, USNORTHCOM
250 Vandenberg St Ste B016
Peterson AFB CO 80914-3801

SUBJECT: USNORTHCOM Comment on the Evaluation of the United States Military Support of Department of Homeland Security Southern Border Security Operations Under Title 10 Authority (Project No. D2020-DEV0SV-0041.000)

1. United States Northern Command (USNORTHCOM) appreciates the opportunity to review and comment on the proposed report. USNORTHCOM concurs with the recommendations summarized on page iii of the proposed report and has already taken corrective measures.
2. We recommend inclusion of the following comment in the Recommendations Table of the final report:

USNORTHCOM Comments:

USNORTHCOM concurs with the recommendations summarized on page iii of the DODIG Evaluation. United States Army North (USARNORTH) has implemented the identified corrective actions for the Standing Rules for the Use of Force (SRUF) training. Additionally, USARNORTH continues to train Title 10 personnel on the SRUF before they perform duties in support of the Department of Homeland Security.

Regarding the recommendation to establish procedures to ensure commanders document SRUF training for DOD Title 10 personnel supporting DHS operations, the Mission Command Element-Southwest Border (SWB) published Fragmentary Orders on 25 March 2020 and 10 July 2020, reinforcing the requirements that all personnel must receive SRUF training and that commanders must document completion of the training. Current deployment orders require all personnel mobilizing to support the SWB mission during Fiscal Year 21 receive SRUF training from Joint Task Force North and 1st Armored Division during the mobilization process. Any late deploying personnel will receive training as part of their individual mobilization process. USARNORTH will report and document the number of personnel gained and trained and the number of SRUF cards distributed in quarterly reports to USNORTHCOM.

3. Our POC is [REDACTED]


TERRENCE J. O'SHAUGHNESSY
General, USAF
Commander

cc:
USARNORTH

Acronyms and Abbreviations

AFNORTH	Air Force North
AOR	Area of Responsibility
ARNORTH	U.S. Army North
ASD (HD&GS)	Assistant Secretary of Defense for Homeland Defense and Global Security
CBP	Customs and Border Protection
CFO	Chief Financial Officer
CJCS	Chairman of the Joint Chiefs of Staff
CJCSI	Chairman of the Joint Chiefs of Staff Instruction
CRF	Crisis Response Force
CUI	Controlled Unclassified Information
DHS	Department of Homeland Security
DSCA	Defense Support of Civil Authorities
FMR	Financial Management Regulation
GAO	Government Accountability Office
JTF-N	Joint Task Force - North
LES	Law Enforcement Sensitive
MSC	Mobile Surveillance Capabilities
O&M	Operations and Maintenance
OIG	Office of Inspector General
OUUSD(P)	Office of the Under Secretary of Defense for Policy
RFA	Request for Assistance
RVSS	Remote Video Surveillance System
SRUF	Standing Rules for the Use of Force
U.S.C.	United States Code
USBP	United States Border Patrol
USD(C)	Under Secretary of Defense (Comptroller)
USD(P)	Under Secretary of Defense for Policy
USNORTHCOM	U.S. Northern Command



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